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John Adams

THE

JUSTICE of the PEACE,

AND

PARISH OFFICER.

BY RICHARD BURN, L.L.D.

Chancellor of the Dioceſe of CARLISLE, and One Of his MAJESTY's Juſtices of the Peace for the County of WESTMORLAND.

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v.4

Rape.

I. What it is.
II. Evidence on an indictment of rape.
III. Punishment of rape.
IV. Principal and accessary.

I. What it is.

Rape, what.

1. RAPE is when a man hath carnal knowledge of a woman, by force, and against her will. 2 *Inst.* 180. 1 *Haw.* 108.

Child under 10.

2. Also, if any person shall unlawfully and carnally know, and abuse any woman child, under the age of ten years, whether with her consent or against it; he shall be guilty of felony without benefit of clergy. 18 *El. c.* 7.

Consenting at last.

3. The offence of rape is no way mitigated, by shewing that the woman at last yielded to the violence, if such her consent was forced by fear of death, or of dures. 1 *Haw.* 108.

Ravishing a common strumpet.

4. Also, it is not a sufficient excuse in the ravisher, to prove that the woman is a common strumpet; for she is still under the protection of the law, and may not be forced. 1 *Haw.* 108.

Consenting after the fact.

5. Nor is it any excuse, that she consented after the fact. 1 *Haw.* 108.

And by the 6 *R.* 2. *c.* 6. When any woman is ravished, and afterwards doth consent to the ravisher; they shall both of them be disabled to have any inheritance, dower, or joint feoffment, but the next of blood shall enter. And the next of kin to the woman ravished may have an appeal against the ravisher, notwithstanding such consent; and the defendant shall not be received to wage battle.

Women ravished conceiving.

6. It is said by Mr. *Dalton*, that if a woman at the time of the supposed rape do conceive with child by the ravisher, this is no rape; for (he says) a woman cannot conceive

except ſhe doth conſent. And this he hath from *Stamford* and *Britton*, and *Finch*. Dalt. *c.* 160.

But Mr. *Hawkins* obſerves, that this opinion ſeems very queſtionable; not only becauſe the previous violence is no way extenuated by ſuch a ſubſequent conſent; but alſo, becauſe if it were neceſſary to ſhew, that the woman did not conceive, the offender could not be tried till ſuch time as it might appear whether ſhe did or not; and likewiſe becauſe the philoſophy of this notion may be very well doubted of. 1 *Haw.* 108.

And L. *Hale* ſays, this opinion in *Dalton* ſeems to be no law. 1 *H. H.* 731.

II. Evidence on an Indictment of rape.

The woman's oath.

1. The party raviſhed may give evidence on oath, and is in law a competent witneſs; but the credibility of her teſtimony, and how far forth ſhe is to be believed muſt be left to the jury, and is more or leſs credible according to the circumſtances of fact that concur in that teſtimony. 1 *H. H.* 633.

Circumſtances in favour of it.

2. For inſtance, if the witneſs be of good fame; if ſhe preſently diſcovered the offence, and made purſuit after the offender; ſhewed circumſtances and ſigns of the injury, whereof many are of that nature, that only women are the moſt proper examiners and inſpectors; if the place, wherein the fact was done, was remote from people, inhabitants, or paſſengers; if the offender fled for it: theſe, and the like, are concurring evidences to give greater probability to her teſtimony, when proved by others as well as her ſelf. 1 *H. H.* 633.

Circumſtances in diſfavour of it.

3. But on the other ſide, if ſhe concealed the injury for any conſiderable time, after ſhe had opportunity to complain; if the place, where the fact was ſuppoſed to be committed, were near to inhabitants or common recourſe or paſſage of paſſengers, and ſhe made no outcry when the fact was ſuppoſed to be done, when and where it is probable ſhe might be heard by others; or if a man prove himſelf to be in another place, or in other company, at the time ſhe charges him with the fact; or if ſhe is wrong in the deſcription of the place, or ſwears the fact to be done in a place where it was impoſſible the man could have acceſs to her at that time, as if the room was locked up, and the key in the cuſtody of another perſon: theſe and the like circumſtances carry a ſtrong preſumption, that her teſtimony is falſe or feigned. 1 *H. H.* 633. *Read.* Rape.

4. Upon

4. Upon the whole; rape, it is true, is a moſt deteſtable crime, and therefore ought ſeverely and impartially to be puniſhed with death; but it muſt be remembered, that it is an accuſation eaſily to be made, and hard to be proved, and harder to be defended by the party accuſed, tho' never ſo innocent: Therefore a wiſe jury will be cautious upon trials of offences of this nature, that they be not ſo much tranſported with indignation at the heinouſneſs of the offence, as to be over haſtily carried to the conviction of the perſon accuſed thereof, by the confident teſtimony, ſometimes of malicious and falſe witneſſes. 1 *H. H.* 635, 636. Caution.

III. Puniſhment of Rape.

1. Of old time rape was felony, for which the offender was to ſuffer death: afterwards the offence was made leſſer, and the puniſhment changed from death to the loſs of thoſe members whereby he offended; that is to ſay, it was changed to caſtration and loſs of his eyes, unleſs ſhe that was raviſhed, before judgment, demanded him for her huſband. 2 *Inſt.* 180. Felony without benefit of clergy.

Then, by the ſtatute of the 3 *Ed.* 1. *c.* 13. it was made a treſpaſs, ſubjecting the offender to two years impriſonment, and a fine, at the king's will; and it was again made felony by the 13 *Ed.* 1. *c.* 34. and at laſt by the 18 *El. c.* 7. was excluded from the benefit of clergy.

2. And no charter of pardon ſhall be allowed for rape, unleſs the rape be ſpecified therein. 13 *R.* 2. *ſt.* 2. *c.* 1. Pardons.

And all rapes are excepted out of the general pardon, of the 20 *G.* 2. *c.* 52.

IV. Principal and acceſſary.

1. Mr. *Hawkins* ſays, all who are preſent, and actually aſſiſt a man to commit a rape, may be indicted as principal offenders, whether they be men or women. 1 *Haw.* 108. Perſons preſent and aiding are principals.

And, ſo one woman may be a principal to the raviſhment of another.

2. And L. *Hale* ſays, that by the 18 *El. c.* 7. the principals in rape are ouſted of clergy, whether they be principals in the firſt degree, to wit, he that committed the fact; or principals in the ſecond degree, to wit, preſent, aiding, and abetting; but acceſſaries, before and after, have their clergy. 1 *H. H.* 633. Not preſent, acceſſaries.

Indictment for a rape.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* ——— *in the county of* ——— *yeoman, not having God before his eyes, but being moved and ſeduced by the inſtigation of the devil, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *in the county aforeſaid, in and upon one* A. I. *ſpinſter, in the peace of God and of our ſaid lord the king then and there being, violently and felonioufly did make an aſſault, and her the ſaid* A. I. *againſt the will of her the ſaid* A. I. *then and there felonioufly did raviſh and carnally know; againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in ſuch caſe made and provided.*

Recognizance.

What it is.

1. A Recognizance is a bond of record, teſtifying the recognizor to owe a certain ſum of money to ſome other; and the acknowledging of the ſame is to remain of record; and none can take it but only a judge or officer of record. *Dalt. c.* 168.

In what caſes it may be taken.

2. And theſe recognizances, in ſome caſes, the juſtices of the peace are enabled to take by the expreſs words of certain ſtatutes: But in other caſes (as for the peace, and good behaviour, and the like) it is rather in congruity, and by reaſonable intendment of law, than by any expreſs authority given them, either by their commiſſion, or by the ſtatute law. *Crom.* 125. *Dalt. c.* 168.

But whereſoever any ſtatute giveth them power to take a bond of any man, or to bind over any man to appear at the aſſizes or ſeſſions, or to take ſureties for any matter or cauſe, they may take a recognizance. Yea, whereſoever they have authority given them to cauſe a man to do a thing, there it ſeemeth they have in congruity power given them to bind the party by recognizance to do it: and if the party ſhall refuſe to be bound, the juſtice may ſend him to gaol. *Dalt. c.* 168.

But he can take no recognizance but only of ſuch matters as concern his office: and if he doth, it ſeemeth to be void. *Dalt. c.* 168.

3. Every

3. Every obligation and recognizance, taken by justices of the peace, must be made to *our lord the king*; on pain of imprisonment of any person that shall take it otherwise. *Dalt. c.* 168. The form of it.

It must also contain the name, place of abode, and trade or calling, both of principal and sureties, and the sums in which they are bound. *Barl.* Recog.

And it is most commonly subject to a *condition*, which is either indorsed, or under written, or contained within the body of it; upon the performance of which the recognizance shall be void. *id.*

4. When the parties are to enter into recognizance, call them by their names thus: "You *A. B.* acknowledge to "owe to our sovereign lord the king, the sum of ———. "And you *C. D.* acknowledge to owe to our sovereign lord "the king, the sum of ——— To be levied of your re- "spective goods and chattels, lands and tenements, for the "use of our said lord the king, his heirs and successors, if "default shall be made in the condition following; That is "to say, if you the said *A. B.* shall make default in appear- "ing, *&c.*" But the parties need not to sign it. *id.* Manner of taking it.

And it is usual for the justices to mark at the foot of the examination, *A. B.* in 40 *l.* to appear *&c.* And from such short note to make out a record afterwards. *id.*

Yet the recognizance is a matter of record presently, so soon as it is taken and acknowledged, altho' it be not made up. *Dalt. c.* 168.

Lord *Coke* (1 *Inst.* 260.) says, that a record is a memorial or remembrance in rolls of *parchment*, &c. From whence it seemeth that a recognizance ought to be ingrossed on parchment, perhaps for this reason, because parchment is more durable than paper; but since there is no law which prohibits it to be ingrossed on paper, it seemeth that if it shall be on paper only, and not on parchment, it is good in law.

And when it is made up, if the justice shall only subscribe his name, without his seal to it, this is well enough; and that may be in either of these sorts, *Acknowledged before me* J. P. or only to subscribe his name thus, *J. P.* Dalt. c. 176.

5. The justices shall certify their recognizances for keeping the peace, to the next sessions, that the party may be called; and if he make default, the default shall be recorded, and the recognizance, with the record of the default, shall be sent and certified into the chancery, king's bench, or exchequer. 3 *H.* 7. *c.* 1. How to be certified.

But in cases of felony, the recognizances are to be certified to the general goal delivery. 1 & 2 *P. & M. c.* 13.

How discharged. 6. *H.* 7 *An. Q.* and *Lord Drummond.* Lord *Drummond* stood bound by recognizance to appear in the court of king's bench the first day of the term; and Sir *Simon Harcourt* excusing his non appearance by reason of sickness, moved that his recognizance might be discharged, the attorney general having orders, and being in court consenting thereto. But *Holt* chief justice said, notwithstanding such consent, my lord *Drummond* not appearing in person, the court could not discharge the recognizance, but said, they could respite it till the next term; which was done accordingly. 11 *Mod.* 200.

E. 12 *An. Q.* and *Ridpath. Ridpath* entered into a recognizance with sureties to appear the first day of the term to answer (generally), and in the mean time to be of the good behaviour, and not to depart without leave of the court. An information was preferred against him by the attorney general; who, for some defect in the pleading, entered a *nolle prosequi*, and then exhibited a new information. The court was of opinion, that the recognizance extended to all crimes whatsoever that he should be charged with; and that if it should have relation to any particular crime only, it must be mentioned in the recognizance, which in this case is only *to answer* generally; that the inconvenience is not so great as is pretended, the bail in this case, being bound in a sum certain, and not to stand in the place of the principal, as in civil cases; and that the *nolle prosequi* is neither a bar nor discharge. 10 *Mod.* 152.

H. 1 *G. K.* and *Tomb.* If a recognizance is estreated in the exchequer, because not punctually complied with, yet if the party appears and takes his trial next session, he may compound for a very small matter in the court of exchequer; because the effect, though not the exact form of the recognizance, is complied with. The judges of oyer and terminer are the proper judges, whether recognizances ought to be estreated or spared; and it is for the advantage of publick justice, that they should have such power, if upon the circumstances of the case they see fit. 10 *Mod.* 278.

And by parity of reason it should seem, that the justices of the peace in the quarter sessions should have the like power in respect of offences cognizable there.

And in case they shall be estreated, where the offence is not attended with aggravating circumstances, it is enacted by the 4 *G.* 3. *c.* 10. as follows: whereas many recognizances have been estreated into the exchequer, against

persons

perſons for not appearing as parties or witneſſes in the courts of record at Weſtminſter, or at the aſſizes, and general quarter ſeſſions, or other courts of record, for not proſecuting indictments there, or otherwiſe not performing the conditions of ſuch recognizances; many of which neglects of duty have happened by the inattention of ignorant people, ſome of whom are impriſoned, and others liable to be ſo, by the proceſs conſtantly iſſued againſt them out of the court of exchequer, tho' no other proſecution be ſubſiſting but merely for ſuch forfeitures of their recognizances, for which there are no eaſy means at preſent for poor perſons eſpecially, to procure any diſcharge; for remedy thereof, it ſhall be lawful for the barons of the exchequer, on affidavit and petition by and on the behalf of the perſon impriſoned, or liable to be impriſoned, on the forfeiture of ſuch recognizance, to diſcharge ſuch perſon, by order, without any *quietus* to be ſued out for that purpoſe; for which order, no more ſhall be taken than one pound and one ſhilling. Provided, that no diſcharge ſhall be given on ſuch petition, where any debt is due to the crown, other than by the recognizance ſo prayed to be diſcharged; nor in any caſes of defrauding the revenue by contraband trade, or aſſaulting the officers of the cuſtoms or exciſe in the execution of their duty, or any perſon lawfully aſſiſting them therein.

THE *conditions* of recognizances, in all the variety of caſes, are interſperſed under their proper titles.

Recognizance with ſureties.

Weſtmorland. BE *it remembered, that on the* ——— *day of* —— *in the* —— *year of the reign of our lord* George *the third of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of* ——— *in the county aforeſaid, yeoman, and* A. S. *of* ——— *in the county aforeſaid, taylor, and* B. S. *of* ——— *in the county aforeſaid, labourer, perſonally came before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and acknowledged themſelves to owe to our ſaid lord the king; that is to ſay, the ſaid* A. O. *the ſum of* 20 l. *and the ſaid* A. S. *and* B. S. *each the ſum of* 10 l. *ſeparately, of good and lawful money of* Great Britain, *to be made and levied of their goods and chattels, lands and tenements reſpectively, to the uſe of our ſaid lord the king, his heirs and ſucceſſors, if the ſaid* A. O. *ſhall make*

default in the condition hereon indorſed, [or, *here-under written*].

Acknowledged before me

J. P.

Recognizance without ſureties.

Weſtmorland. BE *it remembered, that on the* —— *day of* —— *in the* —— *year of the reign of our lord* George *the third of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of* —— *in the ſaid county, yeoman, perſonally came before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and acknowledged himſelf to owe to our ſaid lord the king,* 10 l. *of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands and tenements, to the uſe of our ſaid lord the king, his heirs and ſucceſſors, if he the ſaid* A. O. *ſhall fail in the condition under written* [or, *indorſed*].

J. P.

The Condition of the abovewritten [or, *within written*] *recognizance is ſuch, that if the abovebound* A. O. *ſhall* —— *Then the ſaid recognizance to be void, or elſe remain in its force.*

Recuſants. See **Popery,** and **Publick worſhip.**

Regrator. See **Foreſtaller.**

Releaſe. See **Surety.**

Rent. See **Diſtreſs.**

Reſcue.

What is a reſcous.

1. RESCOUS is an ancient *French* word, coming from *reſcourrer*, that is *recuperare*, to recover; and ſignifies a forcible ſetting at liberty againſt law, a perſon arreſted by the proceſs or courſe of law. 1 *Inſt.* 160.

It ſeems that it is neceſſary, that the reſcuer ſhould have knowledge that the perſon is under arreſt for a criminal offence, if he be in the cuſtody of a private perſon; but if he be in the cuſtody of an officer, there at his peril he is to take notice of it. 2 *H. H.* 606.

But it is ſaid, that to reſcue a felon taken on a general warrant, to anſwer what ſhall be objected againſt him, no cauſe being expreſſed in the warrant, is not felony. 1 *H. H.* 578.

Nor unleſs a felony hath been really done. *Hale's Pl.* 116.

2. Altho' a *priſon breaker* may be arraigned for that offence, before he be arraigned of the crime for which he was impriſoned; yet he, who *reſcues* one impriſoned for felony, cannot, according to the better opinion, be arraigned for ſuch offence as for a felony, till the principal offender be attainted; but he may be immediately proceeded againſt for a miſpriſion, if the king pleaſes. 2 *Haw.* 140. When it ſhall be tried.

And therefore if the principal die before the attainder, he ſhall be fined and impriſoned. *Hale's Pl.* 116.

Alſo if the principal be found not guilty, or guilty of a crime not capital, the reſcuer ought to be diſcharged of felony, but he may be fined for the miſdemeanor. 1 *H. H.* 598, 599.

3. An indictment of *reſcous*, muſt ſet forth the nature and cauſe of the impriſonment, and the ſpecial circumſtances of the fact in queſtion. 2 *Haw.* 140. Indictment.

4. A hindrance of a perſon to be arreſted, that has committed felony, is a miſdemeanor, but no felony: But if the party be arreſted, and then reſcued, if the arreſt was for felony, the reſcuer is a felon; if for treaſon, a traytor: if for treſpaſs, fineable. *Hale's Pl.* 116. 2 *Haw.* 140. Puniſhment.

There are alſo ſpecial penalties enacted for reſcuing offenders againſt particular ſtatutes, which belong not to this general title.

5. Altho' the felony for which a man is arreſted, be not within clergy; yet the reſcuing him is within clergy. 1 *H. H.* 599, 607. Clergy.

6. Upon the return of a *reſcous*, proceſs of outlawry ſhall iſſue. 2 *Haw.* 302. Outlawry.

Indictment for a reſcue.

THE *jurors for our lord the king upon their oath preſent, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, did make, direct, and deliver a warrant or precept in writing,*

ting, to A. C. *of* ——— *in the said county, yeoman, constable of the town of* ——— *aforesaid in the county aforesaid; by which said warrant he the said* A. C. *the constable aforesaid, was commanded to take the body of* A. O. *late of* ——— *yeoman, and bring and have him the said* A. O. *before the said* J. P. *to be examined by him the said* J. P. *concerning an assault said to have been committed by him the said* A. O. *upon* A. I. *of* ——— *yeoman: Which said* A. C. *the constable aforesaid, afterwards, that is to say, on the* ——— *day of* ——— *in the year aforesaid, at* ——— *aforesaid, in the county aforesaid, by virtue of the said warrant, did take and arrest him the said* A. O. *for the cause aforesaid, and him the said* A. O. *in his custody by virtue of the said warrant then and there had: And that the said* A. O. *late of* ——— *aforesaid, in the county aforesaid, yeoman, and* B. O. *late of the same, yeoman, well knowing the said* A. O. *so to be arrested, as aforesaid, afterwards, to wit, on the said* ——— *day of* ——— *in the year aforesaid, at* ——— *aforesaid, in the county aforesaid, with force and arms, in and upon the said* A. C. *the constable aforesaid, then and there being in the peace of God and of our said lord the king, and in the execution of his said office then and there being, did make an assault, and him the said* A. C. *then and there did beat, wound, and ill treat; and that the said* B. O. *him the said* A. O. *out of the custody of the said* A. C. *and against the will of the said* A. C. *then and there with force and arms unlawfully did rescue and put him at large to go where he would; and that the said* A. O. *himself out of the custody of the said* A. C. *and against the will of the said* A. C. *then and there with force and arms, unlawfully did rescue, and escape at large, where he would go; in contempt of our said lord the king and his laws, to the great damage of the said* A. C. *to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.*

Restitution of stolen goods.

THERE are three means of restitution of goods, for the party from whom they were stolen; 1. By appeal of robbery or larceny. 2. By the statute of the 21 *H.* 8. *c.* 11. And, 3. By the course of the common law. 1 *H. H.* 538.

1. *Upon*

1. *Upon an appeal of robbery or larceny.* If the party were convict thereupon, reſtitution of the goods contained in the appeal, was to be made to the appellant; for it is one of the ends of that ſuit. 1 *H. H.* 538. Reſtitution upon an appeal.

And hence it is, that if in an appeal of felony or robbery, the appellant omit any of the goods ſtolen from him, they are forfeit and confiſcate to the king. 1. *H. H.* 538.

And this appeal muſt be upon freſh ſuit; and though antiently the law was ſtrict herein, as to the time and manner of the purſuit and apprehending of the felon, yet the law is now more liberal. 1 *H. H.* 540.

For if the felon be taken by any others, as by the ſheriff, yet if the party robbed come within a year after, and give notice of the felony, and enter his appeal, this is a freſh ſuit, if he uſed his diligence ſhortly after the felony to have taken him. 1 *H. H.* 540.

If a felon waive the goods ſtolen, without any purſuit after him, thoſe goods are not in law waived, nor forfeit to the king or lord of a franchiſe; but if he waive them upon a purſuit of him, then they are waived in law, and forfeit to the king or lord of the liberty. 1 *H. H.* 541.

And this forfeiture is not like a ſtray, where though the lord may ſeize, yet the party who is the owner may retake them within the year and day; but here the true owner cannot ſeiſe his own goods, though upon freſh ſuit within the year and day. 1 *H. H.* 541.

But yet this is not an abſolute loſs of the owner's goods, but rather an expedient, ſettled by law, to drive the owner to convict the felon by proſecuting his appeal; and therefore if he make freſh ſuit, and proſecute his appeal; and the felon be thereupon convict or attaint, and the freſh ſuit be inquired and found, by verdict or inqueſt of office, he ſhall have reſtitution of the goods ſo waived. 1 *H. H.* 541.

2. *By the ſtatute of the* 21 *H.* 8. *c.* 11. Which ſtatute introduced a new law for reſtitution; for before this ſtatute there was no reſtitution upon an indictment, but only upon an appeal: Which ſaid ſtatute enacteth as follows: Reſtitution by the ſtatute of 21 H. 8.

If any felon do rob or take away any man's money or goods, and thereof be indicted and arraigned, and found guilty, or otherwiſe attainted, by reaſon of evidence given by the party robbed, or owner of the money or goods, or by any other by their procurement; then the party robbed or owner of the goods, ſhall be reſtored to ſuch his money or goods: and as well the juſtices of gaol delivery, as other juſtices before whom the felon ſhall be found guilty, or otherwiſe attainted, may award a writ

of

of reſtitution, in like manner as if the felon were attainted on appeal.

Found guilty or otherwiſe attainted] By this it ſeems queſtionable, whether the party be intitled to reſtitution, upon the defendant's ſtanding mute; in which caſe he is neither found guilty, nor otherwiſe attainted. 2 *Haw.* 332.

Or otherwiſe attainted] If the owner prefers a bill of indictment, which is found, and the felon flies, and is outlawed, the owner ſhall have reſtitution; for he gave evidence upon the indictment, which though it be not a conviction, is the ground of the outlawry, which is an attainder. 1 *H. H.* 545.

The party robbed or owner] Therefore if the ſervant be robbed of the maſter's money, or his ſervant by his procurement, give evidence, and convict the felon, the maſter ſhall have a writ of reſtitution, if it appear upon the indictment and evidence, that it was the maſter's money; for the ſtatute gives reſtitution to the party robbed, or owner. 1 *H. H.* 542.

Or owner] If the teſtator is robbed, and the thief is convict upon the procurement of the executor; ſuch executor ſhall have reſtitution; for this being a beneficial law, ought to be conſtrued beneficially, ſo as to extend to executors and adminiſtrators. 3 *Inſt.* 242.

Shall be reſtored] If goods be ſtolen, and not waived in flight, nor ſeized by the king's officers, or lord of the manor, nor ſold in open market, the owner may take them again, without any writ of reſtitution, or may bring his action for them; and this, although he doth not proſecute the offender. 2 *Haw.* 168. *Kely.* 48.

And by the 31 *El. c.* 12. Where *horſes* are ſtolen, and ſold in open market, and the owner claims them again within ſix months, and pays the buyer as much as they coſt him, he ſhall have them again, without proſecution.

But otherwiſe, if the goods be waived by the felon in his flight, or in caſe they be not waived, yet if they be ſeized by the king's officers, or lord of the manor, as ſuſpecting them to be ſtolen; there the party ſhall not have reſtitution, unleſs the felon be convicted at his proſecution. 2 *Haw.* 168. *Kely.* 48.

And in ſuch caſe, he ſhall have no more than what is mentioned in the indictment, though other goods were ſto-

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len at the ſame time; and the reaſon is, becauſe by ſuch omiſſion, the offender might have eſcaped. *Kely.* 49. 1 *H. H.* 545.

To ſuch his money or goods] A man ſtole cattle, and ſold them in open market; the ſheriff ſeized the thief and the money and he was convicted and hanged at the proſecution of the owner of the cattle, and he had reſtitution of the money; for though the ſtatute gives power to the juſtices to award reſtitution of the *money or goods ſtolen*, and though the money in this caſe was not ſtolen, yet becauſe it did ariſe by ſtealing, it ſhall be within the equity, though not in the very words of the ſtatute. *Noy* 128.

But it hath been a great queſtion, if goods be ſtolen, and by the thief ſold in the market overt, whether the thief being convicted upon the evidence of the party robbed, he ſhall have reſtitution upon this ſtatute of the thing ſold or not, the buyer not being privy to the felony: But lord *Hale* argues ſtrongly, that he ſhall have reſtitution, notwithſtanding the ſale in market overt of the goods ſtolen. 1. Becauſe this act was made to encourage perſons robbed, to purſue malefactors, and therefore they have an aſſurance of reſtitution: and it would be ſmall encouragement if a thief by ſale in a market overt, which is every day almoſt in every ſhop in *London*, ſhould elude it. 2. Becauſe the man that is robbed, is robbed againſt his will, and cannot help it; but the buyer of ſtolen goods may chuſe whether he will buy, or if he buy, may yet refuſe to buy, unleſs well ſecured of the property of the goods, or knowing the owner. 1 *H. H.* 542, 3, 4. 2 *Haw.* 170. *Kely.* 48.

In like manner as if the felon were attainted on appeal] And yet upon this ſtatute, if the offender be convict upon the evidence of the party robbed, or owner, he ſhall have reſtitution, though there were no freſh ſuit, or any inquiry by inqueſt touching the ſame; and this is conſtant practice, though in caſe of an appeal it be otherwiſe. 1 *H. H.* 545.

Yet if it ſhall appear to the court, that the party hath been guilty of groſs neglect in proſecuting; it ſeemeth that in ſuch caſe he ſhall not be intitled to reſtitution. 2 *Haw.* 171.

3. *By courſe of the common law.* If the owner takes his goods again of the offender, to the intent to favour him, or maintain him, this is unlawful, and puniſhable by fine and impriſonment; but if he take them again without any ſuch intent, it is no offence. 1 *H. H.* 546. Reſtitution by the common law.

But

But after the felon is convicted, it can be no colour of crime to take his goods again, where he finds them; becauſe he hath purſued the law upon him, and may have his writ of reſtitution, if he pleaſe. 1 *H. H.* 546.

Riot, rout, and unlawful aſſembly.

I. What is a riot, rout, or unlawful aſſembly.
II. How the ſame may be reſtrained by a private perſon.
III. How by a conſtable, or other peace officer.
IV. How by one juſtice.
V. How by two juſtices.
VI. How by proceſs out of chancery.

I. What is a riot, rout, or unlawful aſſembly.

WHEN *three perſons or more ſhall aſſemble themſelves together, with an intent mutually to aſſiſt one another, againſt any who ſhall oppoſe them, in the execution of ſome enterprize of a private nature, with force or violence, againſt the peace, or to the manifeſt terror of the people, whether the act intended were of itſelf lawful or unlawful*; If they only meet to ſuch a purpoſe or intent, although they ſhall after depart of their own accord, without doing any thing, this is an *unlawful aſſembly*.

If after their firſt meeting they ſhall move forward towards the execution of any ſuch act, whether they put their intended purpoſe in execution or not; this, according to the general opinion, is a *rout*:

And if they execute ſuch a thing in deed, then it is a *riot*. (A) 1 *Haw.* 155. *Dalt. c.* 136.

Three perſons or more] And therefore if the jury do acquit all but two, and find them guilty, the verdict is void, unleſs they be indicted *together with other rioters unknown*, becauſe it finds them guilty of an offence, whereof it is impoſſible that they ſhould be guilty; for there can be no riot, where there are not more perſons than two. 2 *Haw.* 441.

And

And infants under the age of diſcretion are not perſons within this deſcription, puniſhable as rioters. 1 *Haw.* 159.

Note; In 1 *Haw.* 156, 157, 158, the words *more than three perſons* are three times over inſerted inſtead of *three perſons or more*; which is only remarked as an inſtance, that in a variety of matter, it is impoſſible for the mind of man to be always equally attentive.

Aſſemble themſelves together] It ſeems agreed, that if a number of perſons being met together at a fair, or market, or church ale, or on any other lawful and innocent occaſion, happen on a ſudden quarrel to fall together by the ears, they are not guilty of a riot, but of a ſudden affray only, of which none are guilty but thoſe who actually engage in it; becauſe the deſign of their meeting was innocent and lawful, and the ſubſequent breach of the peace happened unexpectedly, without any previous intention concerning it: Yet it is ſaid, that if perſons innocently aſſembled together, do afterwards upon a diſpute happening to ariſe among them, form themſelves into parties, with promiſes of mutual aſſiſtance, and then make an affray, they are guilty of a riot; becauſe upon their confederating together with an intention to break the peace, they may as properly be ſaid to be aſſembled together for that purpoſe from the time of ſuch confederacy, as if their firſt coming together had been on ſuch a deſign. 1 *Haw.* 156.

In the execution of ſome enterprize of a private nature] It ſeems agreed, that the injury or grievance complained of, and intended to be revenged or remedied by ſuch an aſſembly, muſt relate to ſome private quarrel only; as the incloſing of lands, in which the inhabitants of a town claim a right of common, or gaining the poſſeſſion of tenements the title whereof is in diſpute, or ſuch like matters relating to the intereſt or diſputes of particular perſons, and no way concerning the publick; for wherever the intention of ſuch an aſſembly is to redreſs publick grievances, as to pull down all incloſures in general, or reform religion, and the like, it is high treaſon. 1 *Haw.* 157.

Againſt the peace, or to the terror of the people] It ſeems to be clearly agreed, that in every riot there muſt be ſome ſuch circumſtances, either of actual force or violence, or at leaſt of an apparent tendency thereto, as are naturally apt to ſtrike a terror into the people; as the ſhew of armour, threatning ſpeeches, or turbulent geſtures; for every ſuch

offence muſt be laid to be done *to the terror of the people*: And from hence it clearly follows, that aſſemblies at wakes, or other feſtival times, or meetings for exerciſe of common ſports or diverſions, as bull baiting, wreſtling, and ſuch like, are not riotous. 1 *Haw.* 157.

And from the ſame ground alſo it ſeems to follow, that it is poſſible for three perſons or more to aſſemble together with an intention to execute a wrongful act, and alſo actually to perform their intended enterprize, without being rioters; as if a man aſſemble a meet company, to carry away a piece of timber or other thing, whereto he pretends a right, that cannot be carried without a great number, if the number be not more than are needful for ſuch purpoſe, although another man hath better right to the thing ſo carried away, and that this act be wrong and unlawful; yet it is of itſelf no riot, except there be withal threatening words uſed, or other diſturbance of the peace. *Dalt. c.* 137. 1 *Haw.* 157.

Much more may any perſon, in a peaceable manner, aſſemble a meet company to do any lawful thing, or to remove or caſt down any common nuſance: Thus every private man, to whoſe houſe or land any nuſance ſhall be erected, made, or done, may in peaceable manner aſſemble a meet company, with neceſſary tools, and may remove, pull, or caſt down ſuch nuſance, and that, before any prejudice received thereby; and for that purpoſe, if need be, may alſo enter into the other man's ground. Thus a man erected a wear croſs a common river, where people have a common paſſage with their boats, and divers did aſſemble, with ſpades, crows of iron, and other things neceſſary to remove the ſaid wear, and make a trench in his land, that did erect the wear, to turn the water, ſo as they might the better take up the ſaid wear, and they did remove the ſame nuſance; this was holden neither any forcible entry, nor yet any riot. *Dalt. c.* 137.

But in the caſes aforeſaid, if in removing any ſuch nuſance, the perſons ſo aſſembled ſhall uſe any threatning words (as to ſay, they will do it though they die for it, or ſuch like words) or ſhall uſe any other behaviour, in apparent diſturbance of the peace, then it ſeemeth to be a riot; and therefore where there is cauſe to remove any ſuch nuſance, or to do any like act, it is the ſafeſt not to aſſemble any multitude of people, but only to ſend one or two perſons, or if a greater number, yet no more than are needful, and only with meet tools, to remove, pull, or caſt down the ſame, and that ſuch perſons tend their buſineſs only, with-

out disturbance of the peace, or threatening speeches. *Dalt. c.* 137.

Whether the act intended were of itself lawful or unlawful] It hath been generally holden, that it is no way material, whether the act intended to be done by such an assembly, be of itself lawful or unlawful; from whence it follows, that if three or more persons assist a man to make a forcible entry into lands, to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nusance, or other thing which may lawfully be done in a peaceful manner, they are as properly rioters, as if the act intended to be done by them were never so unlawful. 1 *H.* 158.

II. How the same may be restrained by a private person.

By the common law, any private person may lawfully endeavour to suppress a riot, by staying those whom he shall see engaged therein, from executing their purpose, and also by stopping others whom he shall see coming to join them. 1 *Haw.* 159.

III. How by a constable or other peace officer.

By the common law, the sheriff, constable, and other peace officers, may and ought to do all that in them lies, towards the suppressing of a riot, and may command all other persons to assist therein. 1 *Haw.* 159.

IV. How by one justice.

By the 34 Ed. 3. c. 1. *The justices of the peace shall have power to restrain rioters, and to arrest and chastise them according to their offence; and cause them to be imprisoned and duly punished, according to the law and custom of the realm, and according to that which to them shall seem best to do, by their discretions and good advisement.*

And this statute hath been liberally construed for the advancement of justice; for it hath been resolved, that if a justice find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail; but that he may also authorize others to arrest them, by a bare verbal command, without other warrant; and that by force

thereof, the perſons ſo commanded may purſue and arreſt the offenders in his abſence, as well as preſence. Alſo it is ſaid, that after a riot is over, any one juſtice may ſend his warrant, to arreſt any perſon who was concerned in it, and alſo that he may ſend him to gaol, till he ſhall find ſureties for his good behaviour. 1 *Haw.* 160.

But it ſeems to be agreed, that no one juſtice hath any power by force of this ſtatute, either to record a riot upon his own view, or to take an inquiſition thereof after it is over: Alſo if one juſtice, proceeding upon this ſtatute, ſhall arreſt an innocent perſon as a rioter, it ſeemeth that he is liable to an action of treſpaſs, and that the party arreſted may juſtify the reſcuing himſelf, becauſe no ſingle juſtice is by this ſtatute made a judge of the ſaid offence. But if a riot ſhall be committed by perſons armed in an unuſual manner, contrary to the ſtatute of *Northampton*, 2 *Ed.* 3. *c.* 3. and any one juſtice acting *ex officio*, in purſuance of the ſtatute, ſeize the armour, and impriſon the offender, and make a record of the whole matter, ſuch a record cannot be traverſed, becauſe it is made by one acting in a judicial capacity. And for the ſame reaſon, if a juſtice proceeding on the ſtatute of the 15 *R.* 2. againſt forcible entries and detainers, ſhall upon his own view record a riot, which ſhall be committed in the making of any ſuch forcible entry or detainer, a riot ſo recorded cannot be traverſed. Alſo if a juſtice acting as a judge by any ſtatute whatſoever impowering him ſo to do, make a record upon his view of a riot committed in his preſence, ſuch record ſhall not be traverſed; for the law gives ſuch uncontroulable credit to all matters of record, made by any judge of record as ſuch, that it will never admit of an averment againſt the truth thereof. 1 *Haw.* 160.

But if the rioters are above the number of twelve, the offence is greatly inhanced, and the power of one juſtice very much inlarged, by the act commonly called the riot act, 1 *G. ſt.* 2. *c.* 5. which is required to be read at every quarter ſeſſions and leet: By which it is enacted, That every juſtice, ſheriff, under ſheriff, and mayor, ſhall on notice or knowledge of any unlawful, riotous, and tumultuous aſſembly of perſons to the number of twelve or more, together with ſuch help as he ſhall command, reſort to the place. *ſ.* 2, 3.

Whereupon he ſhall, amongſt the rioters, or as near to them as he can ſafely come, with a loud voice command, or cauſe to be commanded, ſilence to be, while proclamation is making; and after that, ſhall openly and with a loud

loud voice make or cauſe to be made proclamation in theſe words, or like in effect:

Our ſovereign lord the king chargeth and commandeth all perſons being aſſembled, immediately to diſperſe themſelves, and peaceably to depart to their habitations, or to their lawful buſineſs, upon the pains contained in the act made in the firſt year of king George *for preventing tumults and riotous aſſemblies: God ſave the king.* ſ. 2.

And if any perſon ſhall with force and arms wilfully oppoſe, hinder, or hurt any perſon that ſhall begin or go to make the proclamation, whereby the ſame ſhall not be made, he ſhall be guilty of felony without benefit of clergy. *ſ.* 5.

And if any twelve or more of them ſhall continue together by the ſpace of one hour after ſuch proclamation made, or after ſuch hindrance (having knowledge thereof), they ſhall be guilty of felony without benefit of clergy. *ſ.* 1, 5.

And every juſtice, ſheriff, under ſheriff, mayor, high and petty conſtable, and other peace officer, and every other perſon of age and ability commanded by them to aſſiſt, ſhall apprehend the offenders, and carry them before a juſtice, to be proceeded againſt according to law. And if any rioters be killed or hurt by any of the ſaid perſons in diſperſing or apprehending them, by reaſon of their reſiſtance, ſuch perſons ſhall be indemnified. *ſ.* 3.

Alſo, if any rioters (although under the number of twelve, and whether any proclamation be made or not) ſhall unlawfully and with force demoliſh or pull down any church or chapel, or any building for religious worſhip certified and regiſtred according to the act of toleration, or any dwelling-houſe, barn, ſtable, or other outhouſe, they ſhall be guilty of felony without benefit of clergy. *ſ.* 4. And any one juſtice may proceed againſt them, as againſt other felons.

And the hundred, city, or town, ſhall anſwer the damages thereof, as in caſes of robbery. *ſ.* 6.

Proſecutions on this act, to be within twelve months after the offence. *ſ.* 8.

V. How by two juſtices.

1. *If any riot, aſſembly, or rout of people, againſt the law, be made; the juſtices, three, or two of them at the leaſt, and the ſheriff, or under ſheriff, ſhall come with the power of the county, if need be.* 13 H. 4. c. 7. ſ. 1.

And *the king's liege people being sufficient to travel, shall be assistant to them, upon reasonable warning, to ride with them in aid to resist such riots, routs, and assemblies; on pain of imprisonment, and to make fine and ransom to the king.* 2 H. 5. c. 8. s. 2.

If any riot, assembly, or rout of people, against the law, be made] It is said, that the justices are not only impowered hereby to raise the power of the county to assist them, in suppressing a riot which shall happen within their own view, or hearing, but also that they may safely do it upon a credible information given them of a notorious riot happening at a distance, whether there were any such riot in truth or not; for it may be dangerous for them to stay till they can get certain information of the fact: But they seem to be punishable for alarming the county in this manner, without some such probable ground of their proceeding, as would induce a reasonable man to think it necessary and convenient. 1 *Haw.* 161.

Assembly] It seems clear from hence, that if the justices in going towards the place where they have heard that there is a riot, shall meet persons coming from thence riotously arrayed, they may arrest them for being assembled together in such an unlawful manner, and also make a record thereof; for the statute extends to all other unlawful assemblies whatsoever as well as to riots. 1 *Haw.* 161.

The king's liege people] Except women, clergymen, persons decrepit, and infants under the age of fifteen. 1 *Haw.* 161.

To resist such riots] And also to arrest the rioters, and conduct them to prison. 1 *Haw.* 161.

2. *And shall arrest them.* 13 H. 4. c. 7. s. 1.

And if they shall escape, they may take them on a fresh pursuit; but they cannot at another time award any process against them on the record, but ought to send the record into the king's bench, that process may issue thereon from thence: Yet there seems to be no doubt, but that they may arrest them for their trespass on the aforesaid statute of the 34 *Ed.* 3. in order to compel them to find sureties for their good behaviour. 1 *Haw.* 162.

3. *And the same justices and sheriff, or under sheriff, shall have power to record* (B) *that which they shall find so done in their presence against the law: by which record the offenders shall be convict in the same manner and form as is contained*

tained in the ſtatute of forcible entries. (C) 13 *H.* 4. *c.* 7. *ſ.* 1.

Shall have power to record] And this they may do, whether the offenders be in cuſtody at the ſame time, or have eſcaped. 1 *Haw.* 161.

Shall be convict] And it ſeemeth to be certain, that the record of a riot, expreſsly mentioned to have happened within the view of the juſtices by whom it is recorded, is a conviction of ſo great authority, that it can no way be traverſed, however little ground of truth there might be to affirm, that any riot at all was committed, or however innocent the parties may be of the fact recorded againſt them. 1 *Haw.* 162.

However it ſeemeth clear, that if in ſuch a record of a riot it be contained, that the party was guilty therein of a felony, or maim, or reſcous, the party ſhall be concluded thereby as to the riot only, and not as to any of the other matters; becauſe the juſtices have by this ſtatute a judicial authority over no other offences, except riots, routs, and unlawful aſſemblies. 1 *Haw.* 162.

And inaſmuch as ſuch a record is a final conviction of the parties, as to all ſuch matters as are properly contained in it, it ought to be certain both as to the time and place of the offence, and the number of perſons concerned therein, and the ſeveral kinds of weapons made uſe of by them, and all other circumſtances of the fact; for ſince the parties are concluded from denying the truth of ſuch a record, and have no other remedy to defend themſelves againſt it, but only by advantage of the inſufficiency of what is contained in it, they may juſtly demand the benefit of excepting to it, if it do not expreſsly ſhew, both that they are guilty within the meaning of the ſtatute, and alſo how far they are guilty, and that the juſtices have purſued the power given them by the ſaid ſtatutes: and from the ſame ground it ſeems alſo to follow, that ſuch a record may be excepted againſt, if it do not appear to have been made by the ſheriff or under ſheriff in concurrence with the juſtices. 1 *Haw.* 162.

And this record ought to remain with one of the juſtices, and ſhall not be left amongſt the records of the ſeſſions, it being made out of ſeſſions, and not appointed to be certified thither. *Dalt.* *c.* 82.

In the ſame manner and form as is contained in the ſtatute of forcible entries] That is, the ſtatute of the 15 *R.* 2. *c.* 2. And hereupon it is ſaid, that the offenders being under the

arreſt of the juſtices, and alſo convicted by a record of their offence, ought immediately to be committed to gaol by the ſame juſtices, till they ſhall make fine and ranſom to the king; which can be aſſeſſed by no other juſtices of the peace, except thoſe by whom the record of the offence was made. 1 *Haw.* 162.

And this fine, Mr. *Dalton* ſays, the juſtices ſhall cauſe to be eſtreated into the exchequer, that ſo it may be levied to the king's uſe; and then they are to deliver the offenders again. *Dalt. c.* 82.

But Mr. *Hawkins* ſays, that it hath been queſtioned whether the juſtices can ſafely diſmiſs the offenders upon their paying ſuch a fine as ſhall be impoſed upon them, without ſome judgment for their impriſonment as well as fine; becauſe it is enacted by the 2 *H.* 5. *c.* 8. that ſuch rioters attainted of great and heinous riots, ſhall have one whole year's impriſonment at the leaſt, without being let out of priſon by bail or mainprize; and that the rioters attainted of petty riots, ſhall have impriſonment as beſt ſhall ſeem to the king or to his council. 1 *Haw.* 164.

4. And *if the offenders be departed before the coming of the ſaid juſtices and ſheriff or under ſheriff, the ſame juſtices, three, or two of them, ſhall diligently enquire* (D) *within a month after ſuch riot, aſſembly, or rout of people ſo made, and thereof ſhall hear and determine according to the law of the land.* 13 H. 4. c. 7. ſ. 1.

The ſame juſtices] It is generally ſaid, that any juſtices of the county may take ſuch an inquiry, whether they dwell near the place where the riot happened, or at a diſtance, or whether they went to view the riot or not; for the ſtatute ought to be conſtrued as largely as the words will bear, in favour of the juſtices power in the ſuppreſſing of ſuch riots; and therefore thoſe words in the ſtatute that *the ſame juſtices ſhall inquire*, ought to be thus expounded, that the ſame juſtices who were before impowered to raiſe the poſſe, ſhall inquire, and that is, any juſtices in the county. 1 *Haw.* 163.

Shall diligently inquire] That is, by a jury: In order to which, it is enacted by the 19 *H.* 7. *c.* 13. that the ſheriff, on their precept directed to him, ſhall, on pain of 20 *l.* return 24 perſons, whereof every of them ſhall have lands and tenements within the ſhire, to the yearly value of 20 *s.* of charter land or freehold, or 26 *s.* 8 *d.* of copyhold, or of both, over and above all charges: And he ſhall return upon

upon every juror in iſſues, at the firſt day 20 *s.* and at the ſecond 40 *s.*

Note; *Charter land* had its name from a particular form in the charter or deed, which ever ſince the reign of *H.* 8. hath been diſuſed. 1 *Inſt.* 6.

Within a month] That is, if they do not make inquiry within a month, they are puniſhable for the neglect; yet they may inquire after the month: for the lapſe of a month doth not determine their authority, but only ſubjects them to a penalty. 2 *Salk.* 593.

Shall hear and determine according to the law of the land] And therefore they may award proceſs under their own teſte, againſt thoſe who ſhall be indicted before them of any of the offences abovementioned, according to the form of this ſtatute; and alſo may award the like proceſs for the trial of a traverſe of ſuch an inquiſition; and do all other things in relation thereunto, which are of courſe incident to all courts of record. 1 *Haw.* 163.

And the riot being ſo found by inquiſition, the juſtices muſt make a record thereof in writing of ſuch their inquiry or preſentment found before them; which record alſo is to remain with one of the juſtices. *Dalt. c.* 82.

5. And *if the truth cannot be found in the manner as is aforeſaid, then within a month then next following, the juſtices, three, or two of them, and the ſheriff or under ſheriff, ſhall certify before the king and his council, all the deed and circumſtances thereof, which certificate ſhall be of the like force as the preſentment of* 12 *men; upon which certificate the offenders ſhall be put to anſwer, and ſhall be puniſhed according to the diſcretion of the king and his council.* 13 H. 4. c. 7. ſ. 2.

And if they do traverſe the matter ſo certified, the certificate and traverſe ſhall be ſent into the king's bench to be tried. id. ſ. 3.

And if the offence be not found, by reaſon of any maintenance or embracery of the jurors, then the ſame juſtices and ſheriff or under ſheriff ſhall in the ſame certificate certify the names of the maintainers and embracers, with their miſdemeanors. 19 H. 7. c. 13.

Shall certify] And it ſeemeth certain, that ſuch certificate, being in nature of an indictment at the common law, ought to comprehend the certainty of time, place, and perſons, and other material circumſtances, both of the riot and maintenance. 1 *Haw.* 165.

Before

Before the king and his council] It seems clear, by the council being here distinguished both from the chancery and king's bench, that the certificate ought to be made to the privy council board, and not to either of those courts, which in some statutes relating to judicial proceedings are taken for the king's council. 1 *Haw.* 165.

6. *And the said justices and other officers shall execute their offices aforesaid at the king's costs, in going and continuing in doing their said offices, by payment thereof to be made by the sheriff, by indentures betwixt the said sheriff and justices, and other officers aforesaid, whereof the sheriff upon his account in the exchequer shall have due allowance.* 2 H. 5. c. 8.

In order to the defraying of which, the said statute directs the fines of the offenders to be enlarged, and thereout the sheriff may pay the charges of the said justices; and of the jury, that is, for their diet; and the sheriff's fees, and the like. *Dalt. c.* 82.

7. And *the justices dwelling nigheſt in the county, where such riot, assembly, or rout shall be, together with the sheriff or under sheriff, shall do execution of the said statute of the* 13 H. 4. *every one upon pain of* 100 l. *to the king.* s. 4.

The justices dwelling nigheſt] Although these only are liable to this penalty, yet if any others on notice shall neglect to supply their default, they are fineable at discretion. 1 *Haw.* 166.

But if any justices, who do not dwell neareſt to the place, do actually execute the statute, they excuse all the reſt. 1 *Haw.* 165.

Dwelling nigheſt in the county] Therefore if they dwell nigheſt, but in another county, they are not in danger of this penalty. 1 *Haw.* 166.

Shall do execution of the said statute] That is, in the whole, and not in part only; as by recording a riot, and not committing the parties. 1 *Haw.* 166.

VI. How by process out of chancery.

By the 2 H. 5. c. 8. *If default be found in the two justices, sheriff, or under sheriff, then at the instance of the party grieved, a commission shall be issued under the great seal, to inquire as well of the truth of the case for the complainant, as of such default.*

And by the 2 H. 5. c. 9. and 8 H. 6. c. 14. *Rioters shall be taken by writ and proclamation out of chancery, on suggeſtion*

geſtion of two juſtices and the ſheriff, of the common fame of ſuch riot.

A. Indictment for a riot.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county of* ——— *yeoman,* B. O. *late of the ſame, yeoman,* C. O. *late of the ſame, yeoman, and divers other perſons (to the jurors aforeſaid as yet unknown) on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, with force and arms, unlawfully, riotouſly, and routouſly did aſſemble and gather together, to diſturb the peace of our ſaid lord the king; and ſo being then and there aſſembled and gathered together, in and upon one* A. I. *in the peace of God and of our ſaid lord the king then and there being, unlawfully, riotouſly, and routouſly, did make an aſſault, and him the ſaid* A. I. *then and there unlawfully, riotouſly, and routouſly did beat, wound, and ill treat, and other wrongs to the ſaid* A. I. *then and there unlawfully, riotouſly, and routouſly did; to the great damage of the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

B. Record of a riot on view.

Weſtmorland. BE *it remembered, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *We* J. P. *and* K. P. *eſquires, two of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and* A. S. *knight, ſheriff of the ſaid county, at the complaint and requeſt of* A. I. *of* ——— *in the county aforeſaid, yeoman, in our proper perſons have come to the manſion houſe of him the ſaid* A. I. *in* ——— *aforeſaid, and then and there do find* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, and other malefactors and diſturbers of the peace of our ſaid lord the king to us unknown, to the number of* 11 *perſons, in a warlike manner arrayed, to wit, with clubs, ſwords, and guns, unlawfully, riotouſly, and routouſly aſſembled, and the ſame houſe beſetting, many evils againſt him the ſaid* A. I. *threatening, to the great diſturbance of the peace of our ſaid lord the king, and terror of his people, and againſt the form of the ſtatute in that caſe made and provided. And therefore we the aforeſaid* J. P. K. P. *and* A. S. *the aforeſaid* A. O. B. O. *and* C. O. *do then and there cauſe*

to

to be arrested, and to the next gaol of our said lord the king in the county aforesaid to be conveyed, by our view and record of the unlawful assembly, riot, and rout aforesaid convicted, there to remain every and each of them respectively, until they shall severally and respectively have paid to our said lord the king the several sum of 10 l. *each, which we do impose upon them and every of them separately for their said offence. In testimony whereof, to this our present record we do put our seals. Dated at* ——— *aforesaid, the day and year aforesaid.*

C. Commitment of the rioters upon view.

Westmorland. J. P. *and* K. P. *esquires, two of the justices of our lord the king, assigned to keep the peace within the said county, and* A. S. *knight, sheriff of the said county; To the keeper of the gaol of our said lord the king at* ——— *in the said county, and to his deputy and deputies there, and to every of them greeting.*

Whereas upon complaint made unto us by A. I. *of* ——— *yeoman, we did this present* ——— *day of* ——— *go to the house of the said* A. I. *at* ——— *aforesaid, and there did see* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, and other malefactors to us unknown, assembled together in an unlawful, routous, and riotous manner, to the terror of the people, and against the peace of our said lord the king, and against the form of the statute in that case made and provided: We do therefore send you, by the bringers hereof, the bodies of the said* A. O. B. O. *and* C. O. *convicted of the said riot, rout, and unlawful assembly, by our own view, testimony, and record; commanding you in the name of our said lord the king, to receive them into the said gaol, and them and every of them respectively there safely to keep, until they and every of them shall respectively pay to our said lord the king, the several and respective sum of* 10 l. *each, which we have set and imposed upon them, and each and every of them separately for the said offence. Given under our hands and seals at* ——— *aforesaid, in the county aforesaid, the day and year aforesaid.*

D. Precept

D. Precept to ſummon a jury.

Weſtmorland. J. P. *and* K. P. *eſquires, two of the juſtices of our lord the king, aſſigned to keep the peace in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, To the ſheriff of the ſaid county, greeting. On the behalf of our ſaid lord the king we command you, that you cauſe to come before us at* ——— *in the county aforeſaid, on the* ——— *day of* ——— *next enſuing,* 24 *honeſt and lawful men of the county aforeſaid, every one of which to have lands and tenements within the ſaid county to the yearly value of* 20 s. *of charter land or freehold, or of* 26 s. 8 d. *of copyhold, or of both, over and above all charges, to inquire for our ſaid lord the king, and for our indemnity in this behalf, upon their oath, of certain riots, routs, and unlawful aſſemblies at* ——— *in the county aforeſaid, lately committed, as it is ſaid; And that you return upon every perſon ſo by you to be impanelled* 20 s. *of iſſues at the aforeſaid day, to be by them reſpectively forfeited if they ſhall not appear and be ſworn to inquire of the premiſſes at the ſaid time and place. And this you ſhall in no wiſe omit, on pain of* 20 l. *Given under our hands and ſeals at* ——— *aforeſaid, in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Jurors oath.

YOU *ſhall true inquiry and preſentment make of all ſuch things as ſhall come before you, concerning a riot, rout, and unlawful aſſembly ſaid to have been lately committed at* ——— *in this county; you ſhall ſpare no one for favour or affection, nor grieve any one for hatred or ill will, but proceed herein according to the beſt of your knowledge, and according to the evidence that ſhall be given to you: So help you God.*

The oath which your foreman hath taken on his part, you and every of you ſhall well and truly obſerve and keep on your parts; So help you God.

The

The inquisition, indictment or presentment of the jury.

Westmorland. AN *inquisition for our lord the king, indented and taken at* ——— *in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by the oath of* ——— *honest and lawful men of the county aforesaid, before* J. P. *and* K. P. *esquires, justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, who say upon their oath aforesaid, that* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, together with other malefactors and disturbers of the peace of our said lord the king, to the jurors aforesaid as yet unknown, on the* ——— *day of* ——— *now last past at* ——— *aforesaid, in the county aforesaid, with force and arms, to wit, with clubs, swords, and guns, unlawfully, routously, and riotously did assemble, to disturb the peace of our said lord the king; and so being then and there assembled and gathered together, the mansion house of* A. I. *yeoman, at* ——— *aforesaid, unlawfully, routously, and riotously did enter, and in and upon him the said* A. I. *then and there unlawfully, routously, and riotously did make an assault, and him the said* A. I. *then and there unlawfully, routously, and riotously did beat, wound, and ill treat, in disturbance of the peace of our said lord the king, and to the terror of his people, and against the form of the statute in such case made and provided.*

We whose names are hereunto set, the aboveſaid jurors, do find this inquisition true;
A. B.
C. D. &c.

We the justices aboveſaid do hereby impose the fines here under written, on the aboveſaid offenders;
A. O. 20 *l.*
B. O. 20 *l.*
C. O. 20 *l.*

Rivers and navigation.

1. BY the 4 *G.* 3. *c.* 12. Whereas the laws now in being are not ſufficient for the preſervation of the banks, floodgates, ſluices, and other works, belonging to rivers and ſtreams made navigable by act of parliament, and for maintaining the navigation on ſuch rivers and ſtreams; it is enacted, that if any perſon ſhall wilfully or maliciouſly break, throw down, damage, or deſtroy, any banks, floodgates, ſluices, or other works, or open or draw up any floodgate, or do any other wilful hurt or miſchief to any ſuch navigation, ſo as to obſtruct, hinder, or prevent the carrying on, compleating, ſupporting, or maintaining ſuch navigation; he ſhall be guilty of felony, and tranſported for 7 years. *ſ.* 5. Deſtroying banks and other works.

But by a former ſtatute, viz. 8 *G.* 2. *c.* 20. which was continued from time to time, and by the 27 *G.* 2. *c.* 16. made perpetual; If any perſon ſhall, either by day or night, wilfully or maliciouſly pull down, cut down, pluck up, throw down, level, or otherwiſe deſtroy, any lock, ſluice, floodgate, or other works, on any navigable river, erected or to be erected by authority of parliament; or reſcue any perſon in cuſtody for ſuch offence; he ſhall be guilty of felony without benefit of clergy. And the offender may be tried in an adjacent county. But the attainder ſhall not work corruption of blood, loſs of dower, or forfeiture of lands or goods. Perſon diſcovering and convicting an accomplice ſhall have a pardon. And the hundred ſhall anſwer damages, not exceeding 20 *l.*; to be recovered as in caſes of robbery. *ſ.* 1, 3, 4, 5, 6.

And if any perſon ſhall wilfully and maliciouſly draw or pluck up any floodgate fixed or made in any wear or lock, erected or to be erected by authority of parliament, in or upon any navigable river, for preſerving the navigation thereof; he ſhall, on conviction upon the oath of one witneſs, before two juſtices of the county or place, or of the adjacent county or place, be ſent to the houſe of correction to hard labour for one month. *ſ.* 2.

[It ſeemeth to be the offence in this latter clauſe which is made tranſportation by the aforementioned act; the offences in the former clauſe being more ſeverely puniſh-

able

able by that clauſe than by the aforeſaid act of the 4 *G.* 3. *c.* 12.]

Filling up havens.

2. By the 19 *G.* 2. *c.* 22. If any perſon acting as maſter of a ſhip, ſhall caſt out, or there ſhall be caſt out, of any veſſel being within any haven, road, channel, or navigable river, any ballaſt, or rubbiſh, but only on the land where the tide never comes; any one juſtice near the place, may ſummon the maſter or owner, or other perſon acting as ſuch, againſt whom the information ſhall be made, or iſſue his warrant to bring him before him; and upon due proof made, either by confeſſion of the party offending, or on view of ſuch juſtice, or oath of one witneſs, that any ballaſt or rubbiſh hath been caſt out, the maſter, or perſon acting as ſuch, ſhall be adjudged the offender, and ſhall forfeit not above 5 *l.* nor under 50 *s.* half to the informer, and half to the poor of the pariſh or place where ſuch conviction ſhall be pronounced: To be levied by diſtreſs of the goods of the perſon ſo convicted, or of the ſhip or tackle; and the ſame, if not redeemed in five days, to be ſold, rendering the overplus if any be, after demand in writing, charges of diſtreſs and ſale being firſt deducted. For want of ſufficient diſtreſs, to be committed to gaol or to the houſe of correction where the conviction ſhall be, for two months, or till payment of the penalties, or ſo much thereof for which the commitment ſhall be.

And as ſoon as any veſſel ſhall be ſunk, ſtranded, or run aſhore, in any harbour, channel, or navigable river, or be brought in, or be there in a ſhattered condition, and permitted to remain there, and the owner or maſter ſhall begin to take down, or carry away any of the rigging, or tackle, or if there ſhall not be any perſon to take care of ſuch veſſel; any one juſtice for the county or place, or near which ſuch fact ſhall happen, ſhall on information thereof ſummon the owner, or other perſon having or pretending to have the command thereof, or iſſue his warrant to bring him before him; and on conviction ſhall iſſue his warrant for ſeizing and removing ſuch veſſel, and alſo the rigging and tackle thereof, in ſuch manner as he ſhall order and direct; if ſuch perſon ſhall not within five days give ſatisfactory ſecurity to the juſtice, to clear the harbour of ſuch veſſel, and of all wreck and parts thereof, and pay the charges of ſeizing, removing, and diſpoſing of the veſſel and furniture, then the juſtice ſhall cauſe the hulk and tackle to be ſold, and with the money pay the charges of clearing the place where the veſſel ſhall lie, and of ſeizing,

ſeizing, removing, and ſelling the ſame, rendering the overplus to the owner of the manor where the ſame ſhall happen.

3. By the 24 *G.* 2. *c.* 45. All perſons who ſhall feloniouſly ſteal any goods of the value of 40*s.* in any ſhip, boat, or veſſel, on any navigable river, or in any port of entry or diſcharge, or from any wharf or key, or ſhall be preſent and aiding therein, ſhall be excluded from the benefit of clergy. Stealing goods on a navigable river.

Robbery.

I. What it is.
II. Widening of highways to prevent robberies.
III. Aſſaulting with intent to rob.
IV. Levying hue and cry on a robbery committed.
V. Hundred when liable to anſwer damages.
VI. Manner of bringing the action againſt the hundred.
VII. Damages how to be levied and applied.
VIII. Reward for apprehending a robber.
IX. Pardon for diſcovering an accomplice.
X. Principal and acceſſary in robbery.
XI. Puniſhment of robbery.
XII. What ſhall be done with the goods of which a perſon is robbed.

I. What it is.

1. THERE are two kinds of robbery; from the *perſon*, and from the *houſe*: It is the former of theſe that is treated of under this title: the latter, *viz.* robbery from the houſe, belongeth to the titles Larceny and Burglary. Two kinds of robbery.

2. Robbery, lord *Coke* ſays, is derived from the *French de la robe*, both becauſe they bereave the true man of his *robes*, and alſo for that his money is taken by them from ſome part of his garment, or robes about his perſon. But in truth the word ſeemeth to be much ancienter than the introduction of the *French* into our language; and probably Derivation of the word robbery.

was deduced unto us through the channel of *Saxony* or *Denmark*. *Robber*, in the *Saxon* is *reofere*; in the *Low Dutch*, *roover*; in the *Daniſh*, *roffure*; by a tranſmutation of the letters *b*, *f*, and *v*, frequent in all kindred languages. The *Gothick* tranſlation of the goſpels uſeth *biraubodedun* to ſignify *they robbed*, from *birauban*, *to rob*; which being ſtripped of the prefix augmentative is *rauban*. The *Saxons* expreſſed the ſame by *bereafodon*, which we ſtill preſerve when we ſay *they bereaved*; and in the northern parts of *England*, the words *robbing* and *reaving* are ſtill uſed promiſcuouſly to ſignify rapine and plunder; and when the violent winds do ſtrip a houſe of its thatch or covering, it is called *reoving*.

Definition of robbery.

3. Robbery *is a felony by the common law, committed by a violent aſſault upon the perſon of another, by putting him in fear, and taking from his perſon, his money or other goods, of any value whatſoever.* 3 Inſt. 68.

A felony] For to make it robbery, there muſt be a felonious intention; and ſo it ought to be laid in the indictment. 1 *H. H.* 532.

By putting him in fear] In the caſe of *Macdaniel* and others, at the *Old Baily* ſeſſions in December 1755, *Stephen Macdaniel*, *John Berry*, *James Eagen*, and *James Salmon*, were indicted as acceſſaries before, to a robbery committed by *Peter Kelly* and *John Ellis* on the perſon of the ſaid *James Salmon*. The jury found a ſpecial verdict, that *Kelly* and *Ellis* were convicted of the ſaid robbery; that before the robbery, all the priſoners and one *Thomas Blee*, in order to procure to themſelves the rewards given by act of parliament for apprehending robbers, did meet at the *Bell* inn in *Holbourn*, and agreed that the ſaid *Blee* ſhould procure two perſons to commit a robbery on the priſoner *Salmon*; that for that purpoſe, they contrived that *Blee* ſhould inform the perſons ſo to be procured that he would aſſiſt them in ſtealing ſome linen in the pariſh of St. *Paul*, *Deptford*; that in purſuance of this agreement, and with the privity of all the priſoners, the ſaid *Blee* did procure *Ellis* and *Kelly* to go with him to *Deptford* in order to ſteal linen, but did not at any time before the robbery inform them of the intended robbery; that they went with *Blee* to *Deptford*, and the priſoner *Salmon* being likewiſe waiting there in purſuance of the agreement, they robbed him of the money and goods mentioned in the indictment: They further find, that none of the priſoners had any converſation with *Ellis* and *Kelly*

previous

previous to the robbery, but that *Macdaniel*, *Eagen*, and *Berry* ſaw them and approved of them as proper for the purpoſe of robbing *Salmon*. This was argued before all the judges; who were unanimouſly of opinion, that ſuppoſing a robbery to have been committed, all the priſoners were guilty as acceſſaries before, except *Salmon* who could not be acceſſary to the robbing of himſelf; but foraſmuch as the goods were taken from *Salmon* in purſuance of the agreement beforementioned, they were of opinion that in legal conſtruction he was not robbed at all, ſince it is of the eſſence of robbery, that the goods be taken againſt the will of the owner; altho' the circumſtance of putting in fear is perhaps not neceſſary to be inſerted in the indictment, at leaſt it need not to be ſtrictly proved, for if a man is knocked down without any previous warning and thereby rendered inſenſible, or if he manfully reſiſts and is overpowered without being under any fear at all, it is not the leſs robbery upon that account. And the priſoners were diſcharged of the indictment.—But afterwards an indictment was found againſt them, and proſecuted at the expence of the crown on the repreſentation of the judges, for a conſpiracy; in which the principal facts found by the ſpecial verdict in the robbery bill were charged. On this indictment they were all convicted; and the court gave judgment, that they be all ſet in and upon the pillory twice; that they ſtand committed for 7 years, and until they find ſureties for their good behaviour for 3 years afterwards. One of them (*Eagen*) loſt his life in the pillory, thro' the reſentment of the populace. And on that account, the others did not ſtand a ſecond time. But they were all in *Newgate* very cloſely confined in purſuance of their ſentence. *Foſt.* 121.

And taking from his perſon] Taking a thing in a man's preſence, is in law a taking from the perſon. *Hale's Pl.* 73. *Str.* 1015. *K.* againſt *Francis* and others.

Thus, if one take or drive my cattle out of my paſture, in my preſence, this is robbery, if he make an aſſault upon me, or put me in fear. *Hale's Pl.* 73.

II. Widening of highways to prevent robberies.

Highways leading from one market town to another, ſhall be enlarged, ſo that there be neither dyke, tree, nor buſh, except aſhes or great trees, whereby a man may lurk to do hurt, within 200 foot of each ſide. And if by default of the lord, that will not avoid the dyke, underwood, or Wood near highways.

bushes, any robberies be done, the lord shall be answerable for the felony; and if murder be done, the lord shall make a fine at the king's pleasure. And if a park be taken from the highway, it shall be set at 200 foot distance; or else a fence shall be made, so as offenders may not pass nor return to do evil. 13 *Ed.* 1. *st.* 2. *c.* 5.

III. Assaulting with intent to rob.

Assaulting with intent to rob.

1. If any person shall with any offensive weapon assault, or by menaces, or in any forcible or violent manner, demand any money or goods, with a felonious intent to rob him, he shall be guilty of felony, and be transported for seven years. 7 *G.* 2. *c.* 21.

Killing a person intending to rob.

2. If any person be indicted, or appealed, for killing any person attempting to rob, he shall be acquitted. 24 *H.* 8. *c.* 5.

IV. Levying hue and cry on a robbery committed.

Hue and cry.

Immediately upon robberies committed, fresh suit shall be made from town to town, and from county to county. 13 *Ed.* 1. *st.* 2. *c.* 1.

V. Hundred when liable to answer damages.

Hundred shall answer.

1. The hundred where the offence was committed, shall be answerable for the robberies, and for the damages if the offender be not taken. 13 *Ed.* 1. *st.* 2. *c.* 2. 28 *Ed.* 3. *c.* 11.

Hundred neglecting hue and cry, shall contribute.

2. But such hundred may recover back half the damages, from any other hundred where fresh suit after hue and cry shall not be made. 27 *El. c.* 13. *s.* 2.

Hundred not answerable, if a robber is apprehended.

3. But the hundred shall not be chargeable, if one robber be apprehended in 40 days from the publication in the gazette; as is hereafter mentioned. 8 *G.* 2. *c.* 16. *s.* 3.

Nor for a robbery in a new highway.

4. Also, a new highway changed for an ancient one, without a writ of *ad quod damnum*, and an inquisition found thereon, is said to be not such a highway, in which the inhabitants are bound to watch, nor to make amends for a robbery therein committed. 1 *Haw.* 202.

Nor if on the lord's day.

5. Likewise if any person, which shall travel upon the lord's day, shall be then robbed, the hundred shall not be liable: nevertheless they shall make hue and cry, on pain of forfeiting to the king as much as might have been recovered against

againſt the hundred, if the robbery had not been on the lord's day. 29 *C.* 2. *c.* 7. *ſ.* 5.

Which ſhall travel] *M.* 7 *G. Taſhmaker* againſt the hundred of *Edmonton*. The plaintiff lived a mile or two from the church, and going thither with his lady in his coach upon a *ſunday*, was robbed; and brought his action againſt the hundred, and recovered; for the ſtatute extends only to the caſe of *travelling:* But *Pratt* Ch. J. ſaid, if they had been going to make viſits, it might have been otherwiſe. *Str.* 406. *Comyns.* 345.

6. Alſo, if any man be robbed in his houſe, the hundred ſhall not be charged therewith, whether it were done by day or night; becauſe every man's houſe is his caſtle, which he ought to defend; and if any one is robbed in his houſe, it ſhall be eſteemed his own fault. *Dalt. c.* 84. Nor if it be in an houſe.

7. Alſo, a robbery done in the night, ſhall not charge the hundred; but yet if it be in the day time, or there be ſo much day light as that one may ſee a man's face, ſo that the robber may be known, though it be before the ſun riſing, or after the ſun ſetting, the hundred ſhall anſwer for it. *Dalt. c.* 84. Nor if it be in the night.

8. By the 22 *G.* 2. *c.* 24. No perſon ſhall recover againſt the hundred, more than the value of 200 *l.* unleſs the perſons robbed, ſhall at the time of the robbery be together in company, and be in number two at the leaſt, to atteſt the truth of his or their being ſo robbed. In what caſe there muſt be two in company.

9. And by the yearly land tax acts, no receiver general, or any of his agents employed for carrying any money on account of the ſaid tax, ſhall maintain an action againſt the hundred for being robbed, unleſs the perſons carrying ſuch money be together in company, and be in number three at the leaſt. In what caſe three in company.

VI. Manner of bringing the action againſt the hundred.

In order to make the hundred liable, theſe things following muſt be done:

1. *The perſon robbed ſhall, with as much convenient ſpeed as may be, give notice thereof, unto ſome of the inhabitants near the place.* 27 El. c. 13. ſ. 11. Notice to the inhabitants.

And though that place, where notice is given, be in another hundred or county, yet it is good enough; for a ſtranger may not know the confines of the hundred or county: and that hundred where notice is given muſt make hue and cry, and by that means the hundred where the robbery was

committed will soon know thereof. *Cro. Ca.* 41, 379. 3 *Salk.* 184.

Notice to a constable.

2. *He shall also give notice, with as much convenient speed as may be, to a constable of the hundred, that is, the high constable, or to a constable of some place near; or leave notice in writing at his house, describing therein the felon, and the time and place of the robbery.* 8 G. 2. c. 16. s. 1.

M. 16 *G.* 2. *Ball* against the hundred of *Wymersley.* Upon a case made at the assizes, it was stated, that soon after six in the morning, the plaintiff was robbed at two miles and a half distance from *Northampton*, and the highwayman cut his bridle and stirrups, threw them into a ditch, and turned his horse loose; that the plaintiff recovered them, remounted, rode through a village called *Cotton*, where he gave no notice, met three men on the road whom he informed of the robbery, and arrived at *Northampton* by seven o'clock, and gave notice to an innkeeper there, from whence he went to *Rotherthorpe*, three miles off, where the high constable lived, and between eight and nine gave notice. And whether this notice was sufficient to maintain the action, was the question. And the court on argument held it to be good notice, for the high constable is the properest person to go to, and it is not required that he go to the next constable. It appears the plaintiff lost no time, considering the circumstances he was in: and *Rotherthorpe* is not at such a distance, but that it may come within the meaning of the word *near*. So the plaintiff had judgment. *Str.* 1170.

And every constable, to whom such notice shall be given, and every high and petty constable within the hundred, as soon as the same shall come to his knowledge by the party robbed, or by any to whom such notice hath been given, shall with the utmost expedition make and cause to be made fresh suit and hue and cry after the felons, on pain of 5 *l.* with costs, half to the king, and half to him who shall sue. 8 *G.* 2. *c.* 16. *s.* 11, 12. Note; the penalty here is but small; but as the not pursuing hue and cry was also an offence at the common law, the offender may be indicted at the common law, and thereupon fined and imprisoned.

Notice in the gazette.

3. The party robbed shall also, within 20 days, cause notice to be given in the gazette, describing therein the felon, and the time and place of the robbery, and the goods and effects whereof he was robbed. 8 *G.* 2. *c.* 16. *s.* 1.

To be examined on oath.

4. *He shall also be examined on oath within twenty days next before the action brought, by some justice in or near the hundred, whether he knows any of the robbers; and if he confesses that*

that he does, he shall before the action brought, be bound over by the said justice to prosecute. 27 El. c. 13. s. 11.

He shall also be examined] That is, the party robbed, who is to bring the action, shall be examined. But here note a diversity. *T.* 2 *Car. Raymund* and the hundred of *Oking*. The *servant* was robbed of his master's goods, and the servant made oath before a justice, and the master brought the action against the hundred. By the court; The action well lies for the master; and the servant's oath is sufficient, for it was properly in his notice, that he was robbed, and did not know any of the robbers, and the master knows it not that he was robbed, or who were the persons, but by report of his servant; and it would be inconvenient, if the master should not bring the action, but the servant only; for the servant might release, or compound, or discontinue the suit, and so the master should have the loss by his falsehood: therefore the master shall bring the action, and have his servant who was robbed, to be his witness. *Cro. Car.* 37.

Within 20 *days next before*] And the time of making such oath must be laid in the declaration, for that is traversable. 3 *Salk.* 184.

Before a justice] And if the justice shall refuse upon his request, to examine him, an action will lie against the justice; because he doth not act therein as a judge of record, but as a minister appointed for the examination by the statute. *Cro. Car.* 211.

Whether he knows any of the robbers] H. 19 *G.* 2. *William King* against the hundred of *Bishop's Sutton*. In an action brought against the hundred, the oath proved was, that he had *good reason to suspect* the fact was done by *Robert Gibbs* and *William Langford*, both of such a parish. And a doubt arising at the assizes, whether this was sufficient or not, a case was made, and twice argued at the bar. And upon the second argument, the court were of opinion, that the examination did not maintain the action. The oath required is a condition precedent, and for the sake of the hundred, and to prevent screening the offenders. There is a great deal of difference between *suspecting* and *knowing*: a man who *knows* the offender may purposely stop at the word *suspect*; to avoid being bound to prosecute: and though it would be equivocating, yet it would hardly be perjury assignable; it being only a suppression of part of the truth. He should have said, *I suspect them to be the men, but I do not know it.* It will be dangerous to let them go out of the

words of the act, and therefore the plaintiff failed in the action, and paid the coſts of a nonſuit. *Str.* 1247.

Bond to pay coſts.

5. Alſo before the action be commenced, he ſhall go before the chief clerk, or ſecondary, or the filazer of the county, or the clerk of the pleas of that court wherein ſuch action is intended to be brought, or their deputies, or before the ſheriff of the county, and enter into 100 *l.* bond, to the high conſtable, with two ſufficient ſureties, to pay him coſts, if he (the proſecutor) ſhall be caſt. And no greater fee ſhall be taken for the bond, than 5 *s.* above the ſtamp. 8 *G.* 2. *c.* 16. *ſ.* 1, 2.

Bond to be certified.

6. If bond is taken before the ſheriff, he ſhall immediately certify the ſame in writing, to the reſpective officer abovementioned; which certificate the perſon robbed ſhall deliver to ſuch officer before the action is brought: and he ſhall pay not more than 2 *s.* 6 *d.* fee to the ſheriff for making ſuch certificate, nor more than 2 *s.* 6 *d.* to the officer for receiving and filing the ſame. And the bond ſhall be delivered to the high conſtable *gratis*. 8 G. 2. c. 16. *ſ.* 2.

Time of bringing the action.

7. All this being done, and 40 days being expired from the day of the publication in the gazette (for if one of the offenders is apprehended within that time, the action will not lie, 8 *G.* 2. *c.* 16. *ſ.* 3.); and alſo a whole year not being expired from the time of the robbery committed (for if a year is expired, in ſuch caſe alſo the action will not lie, by the 27 *El. c.* 13. *ſ.* 9.) But all theſe things being regularly and duly performed, then the action may be brought.

Proceſs to be ſerved on the high conſtable.

8. And the proceſs ſhall be ſerved on the high conſtable only; who ſhall cauſe publick notice thereof to be given in one of the principal market towns on the next market day; and if there is no market town in the hundred, then in ſome pariſh church within the hundred, on the next *ſunday* immediately after divine ſervice. He ſhall alſo enter appearance, and defend the action, as he ſhall be adviſed. 8 *G.* 2. *c.* 16. *ſ.* 4.

Inhabitants may be witneſſes.

9. On the trial; any inhabitant may be a witneſs for the hundred. 8 *G.* 2. *c.* 16. *ſ.* 15.

VII. Damages how to be levied and applied.

Writ of execution to be ſhewn to two juſtices.

1. If the plaintiff recover, the ſheriff ſhall ſhew the writ of execution to two juſtices (1 *Q.*) in or near the hundred. 27 *El. c.* 13. *ſ.* 5. 8 *G.* 2. *c.* 16. *ſ.* 4.

And the high conſtable's charge.

2. The high conſtable alſo ſhall cauſe his attorney's bill to be taxed by the proper officer, and ſhall give in to the ſaid

ſaid juſtices an account thereof, and of his other expences in defending the action, and make due proof of the ſame upon oath, to the ſatisfaction of the ſaid juſtices. 8 *G.* 2. *c.* 16. *ſ.* 4.

3. The ſaid two juſtices ſhall thereupon cauſe a taxation to be made, and levied in 30 days, upon every diviſion within the hundred, by the conſtables, by diſtreſs and ſale. 8 *G.* 2. *c.* 16. *ſ.* 4, 10. Taxation.

4. And the conſtables ſhall in ten days pay the ſame to the ſheriff, and the ſheriff ſhall pay the ſame without fee to the plaintiff for his coſts and damages, and to the high conſtable for his expences. 8 *G.* 2. *c.* 16. *ſ.* 4, 5. Payment.

5. The high conſtable ſhall in like manner, if he recovers againſt the plaintiff, be reimburſed his expences which ſhall be over and above the coſts to be taxed, and alſo ſuch coſts taxed as he ſhall not be able to recover, by reaſon of the inſolvency of the plaintiff and of his ſureties; which ſhall be paid in ten days to the ſaid two juſtices, or one of them, who ſhall upon requeſt deliver over the ſame to the high conſtable. 8 *G.* 2. *c.* 16. *ſ.* 7, 8. High conſtable to be reimburſed, if the plaintiff is caſt.

6. And the ſheriff ſhall not be obliged to return the writ of execution, till after 60 days from the time it ſhall be delivered to him; and there may be time for the taxation, aſſeſſment, and collecting the money. 8 *G.* 2. *c.* 16. *ſ.* 6. Return of the writ.

VIII. Reward for apprehending a robber.

1. Any perſon or perſons apprehending a felon, whereby the hundred becomes indemnified, ſhall have 10 *l.* reward paid by the hundred; the ſame to be aſcertained, levied, and paid, by two juſtices (1 *Q.*) in or near the hundred, in ſuch proportions as they ſhall think reaſonable, within the hundred. 8 *G.* 2. *c.* 16. *ſ.* 9. 10 l. by the hundred.

2. And moreover, every perſon who ſhall apprehend a highwayman, and proſecute him till he be convicted of any robbery committed in or upon any highway, paſſage, field, or open place, ſhall have from the ſheriff of the county where the robbery and conviction was made and done, without paying any fee for the ſame, the ſum of 40 *l.* within one month after ſuch conviction and demand thereof made, by tendring a certificate to the ſheriff, under the hand of the judge, certifying the conviction of ſuch felon for a robbery done within the county of the ſaid ſheriff, and alſo that ſuch felon was taken by the perſon claiming the reward. 1 *W.* *c.* 8. *ſ.* 2. 40 l. by the king.

For

For which certificate ſhall be paid, for writing and drawing thereof, 5*s.* and no more. 6 *G. c.* 23. *ſ.* 8.

And if any diſputes ſhall ariſe between the perſons apprehending, touching their right to the reward, the judge ſhall by the ſaid certificate direct it to be paid unto and amongſt the parties claiming, in ſuch proportions as to him ſhall ſeem juſt and reaſonable. And if the ſheriff ſhall make default of payment, he ſhall forfeit double, with treble coſts. 4 *W. c.* 8. *ſ.* 2.

And the ſtreets of *London* and *Weſtminſter*, and of other cities, towns, and places, ſhall be deemed highways as to this matter. 6 *G. c.* 23. *ſ.* 8.

And the goods taken with the highwayman.

3. And as a further reward, ſuch perſon ſhall have moreover the horſe, furniture, and arms, money, or other goods of the robber, that ſhall be taken with him, notwithſtanding the right of the king, or lord of the manor, or of the perſon lending or letting the ſame to hire: but ſaving the right of them from whom they may have been feloniouſly taken. 4 *W. c.* 8. *ſ.* 6.

Perſon killed in apprehending a highwayman.

4. And if a perſon is killed in endeavouring to apprehend ſuch highwayman, the ſheriff ſhall pay the like ſum of 40 *l.* without fee, under the like penalty, to the executors or adminiſtrators of the perſon killed; immediately, upon certificate delivered to him under the hand and ſeal of the judge of aſſize for the county where the fact was done, or the two next juſtices, of ſuch perſon being ſo killed: Which certificate, the ſaid judge, or juſtices, upon proof before them made, ſhall give immediately without fee. 4 *W. c.* 8. *ſ.* 3.

Sheriff to be allowed the reward in his accounts.

5. And the ſheriff ſhall have the ſaid rewards allowed to him in his accounts. 4 *W. c.* 8. *ſ.* 4.

IX. Pardon for diſcovering accomplices.

Pardon for diſcovering accomplices.

If any perſon, being out of priſon, ſhall commit any robbery, and afterwards diſcover two or more perſons, who ſhall commit any robbery, ſo as two or more be convicted; he ſhall have the king's pardon for all robberies he ſhall have committed before ſuch diſcovery; which pardon ſhall be likewiſe a bar againſt any appeal for ſuch robbery. 1 *W. c.* 8. *ſ.* 7.

X. Principal and acceſſary in robbery.

Acceſſary.

All that come in company to rob, are principals, though one only actually to do it. *Hale's Pl.* 72.

XI. Puniſhment of robbery.

1. Robbery is generally excluded from the benefit of clergy. 3 *Inſt.* 68. 2 *Haw.* 531—537. 2 *H. H. c.* 48. Clergy.

2. And by the 20 *G.* 2. *c.* 52. Robbery is excepted out of the general pardon. Pardon.

3. By the 22 *G.* 2. *c.* 33. Robbery in the navy ſhall be puniſhed with death, or otherwiſe, as a court martial, on conſideration of circumſtances, ſhall find meet. Navy.

XII. What ſhall be done with the goods of which a perſon is robbed.

1. If the perſon robbed doth not proſecute the robber; if his goods are waived in flight, or ſeized by the king's officers, or lord of the manor, he ſhall not have them reſtored. *Kely.* 49. Reſtitution of goods taken by robbery.

2. But if they are not waived in flight, nor ſeized by the king's officers, or lord of the manor, he may take his goods again wherever he finds them, without the formality of reſtitution being awarded, if they be not ſold in open market; and this alſo, although he doth not proſecute the robber. *Kely.* 48.

3. But if he ſhall proſecute the robber to conviction; he ſhall have reſtitution, although they have been waived, and ſeized, and even ſold in open market. *Kely.* 48.

Notice in the gazette, before the action brought againſt the hundred.

NOTICE *is hereby given (purſuant to an act of parliament made in the eighth year of the reign of his late majeſty king* George *the ſecond, intitled,* An act for the amendment of the law relating to actions on the ſtatute of hue and cry) *that* A. I. *of* ——— *in the county of* ——— *gentleman, on* ——— *the* ——— *day of* ——— *now laſt paſt, between the hours of eight and nine in the forenoon of the ſame day, was overtaken and robbed by two perſons, in the highway between* ——— *and* ——— *in the county of* ——— *one of them being a tall thin man, marked on the face with the ſmall pox, and having on a brown riding coat, mounted on a black mare; the other a middle ſized man, wearing his own hair of a light brown colour, and riding on a grey gelding; which perſons took from him the ſaid* A. I. *ten guineas in gold, ſeven*

seven shillings in silver, an halfpenny, and a silver watch, and then made off.

Examination of the person robbed, before the action brought.

Westmorland. THE *examination of* A. I. *of* ——— *in the county aforesaid, yeoman, taken on oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, dwelling in* [or, *near to*] *the hundred of* ——— *within the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

Who saith, that on Monday *the* ——— *day of this present month of* ——— *between the hours of two and three in the afternoon of the same day, at or near a place called* ——— *he was assaulted in the highway there leading from* ——— *to* ——— *by two horsemen, whereof one was a tall lusty man, wearing a black wig, and a blue grey coat, mounted on a bay gelding about fifteen hands high, with a black mane and tail, and star in his forehead; and the other a middle sized man, of a swarthy complexion, having a large scar on his left cheek, having on a dark brown riding coat, and mounted on a black gelding; and by them robbed in the highway aforesaid of the sum of* ——— *in money, one silver watch of the value of* 4l. *and one pocket book: And that he the said* A. I. *at the time of the said robbery committed, did not know, nor yet doth know, either of the said persons who committed the same: And that he is since informed, that the said highway and place where he was so robbed as aforesaid, are in the parish of* ——— *and within the hundred of* ——— *in the said county.*

Taken, made, and signed the day and year above written, before me, A. I.

J. P.

Indictment for a robbery.

Westmorland. THE *jurors for our lord the king upon their oath present, That* A. O. *late of* ——— *in the county of* ——— *labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *in the county of* ——— *in the king's highway there, upon one* A. I. *in the peace of God and of our said lord the king then and there being, feloniously did make an assault, and him the said* A. I. *in bodily fear and danger of his life, in the highway aforesaid, then and there*

feloniouſly did put, and one gold watch of the value of ——— of the goods and chattels of him the ſaid A. I. *from the perſon, and againſt the will of the ſaid* A. I. *in the highway aforeſaid, then and there feloniouſly and violently did ſteal, take and carry away; againſt the peace of our ſaid lord the king, his crown and dignity.*

Note, the form of a warrant for apprehending a robber upon freſh ſuit, is inſerted under the title Hue and cry.

Rout. See Riot.
Rum. See Exciſe.
Run goods. See Exciſe.

Sabbath. See Lord's day.

Sail cloth.

BY the 9 *G.* 2. *c.* 37. (which by the 4 *G.* 3. *c.* 11. hath continuance to *Sept.* 29, 1771, *&c.*) every maker of *Britiſh* ſail cloth, ſhall ſtamp his name and place of abode in words at length on every piece; on pain of 10 *l.* on conviction by the oath of one witneſs before one juſtice: And if any perſon ſhall wilfully obliterate the ſtamp, or ſtamp another perſon's name and place of abode, and not his own, he ſhall forfeit 5 *l.* (and by the 4 *G.* 2. *c.* 27. 10 *l.*) to the informer; by diſtreſs, by warrant of two juſtices.

Sacraments. See Publick worſhip.
Sacrilege. See Larceny, Burglary.
Salmon. See Game.
Salt. See Exciſe.

Sanctuary.

Sanctuary.

BY the 21 *J. c.* 28. *ſ.* 7. No ſanctuary or privilege of ſanctuary, ſhall be admitted or allowed in any caſe.

Scavengers.

THE juſtices in any city or market town (not having already proviſion made for them therein by any former law), at their general or quarter ſeſſions, may appoint ſcavengers for cleanſing the ſtreets, and may order the repairing ſuch ſtreets therein as they ſhall judge neceſſary; and for defraying the charges thereof, an aſſeſſment not exceeding 6 *d.* in the pound for one year, may be made, levied, and collected as by their order in ſuch ſeſſions they ſhall appoint; which being allowed under their hands and ſeals, may (if not paid in eight days after demand) be levied by their warrant by diſtreſs, rendring the overplus, after deducting the charges of making, keeping, and ſelling ſuch diſtreſs. 1 *G. ſt.* 2. *c.* 52. *ſ.* 9. 9 *G.* 2. *c.* 18. *ſ.* 3.

There are ſeveral acts which direct the paving and cleanſing the ſtreets of particular cities and towns, which not being of general concern, are not here inſerted.

Schoolmaſters.

Diſſenters teaching without licence.

1. HOW far ſchoolmaſters, being proteſtant diſſenters, are exempted, as ſuch, from the penalties inflicted by the laws for teaching ſchool without licence, is treated of under the title Diſſenters.

Papiſt teaching ſchool.

2. If any papiſt ſhall keep ſchool, or take upon him the education, or government, or boarding of youth, he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W. c.* 4. *ſ.* 3.

3. Where

3. Where a schoolmaster, in correcting his scholar, happens to occasion his death; if in such correction he is so barbarous as to exceed all bounds of moderation, he is at least guilty of manslaughter; and if he make use of an instrument improper for correction, and apparently endangering the scholar's life, as an iron bar, a sword, or kick him to the ground, and then stamp on his belly, and kill him, he is guilty of murder. 1 *Haw.* 73, 74. Schoolmaster by correction killing his scholar.

Seamen.

FOR apprentices to the sea service, see title Apprentices.

1. No listed seamen shall be taken out of his majesty's service, by any process, other than for some criminal matter, unless affidavit be first made, that the debt or damage amounts to 20 *l.* 31 *G.* 2. *c.* 10. *f.* 28. In what cases they may be arrested.

But the plaintiff may, on notice first given to the defendant, enter a common appearance, and proceed to judgment and outlawry, and have execution other than against his body. *f.* 29.

2. No court martial may punish or try any offence committed by any seamen in his majesty's service, which shall not be committed on the main sea, or in great rivers beneath the bridges, or in a haven or creek within the jurisdiction of the admiralty; except in the case of spies, or of mutiny and desertion, or disobedience, or of offences committed on land in foreign countries. 22 *G.* 2. *c.* 33. *f.* 40. What offences the court martial may punish.

3. Seamen who have been employed in the king's service since the accession of king *George* the second, and not deserted, may set up and exercise such trades as they are apt for, in any town or place in *Great Britain* or *Ireland*, without molestation (except in *Oxford* or *Cambridge*;) and if any person is sued thereupon, and the plaintiff is cast, such person shall have double costs. 22 *G.* 2. *c.* 44. 3 *G.* 3. *c.* 8. Where they may exercise trades.

4. A seaman, instead of being committed to the house of correction, for default of paying the penalty for swearing, shall be put in the stocks for one hour for every single offence, and for any number of offences of which he shall be convicted at one and the same time, two hours. 19 *G.* 2. *c.* 21. *f.* 5. Convicted of swearing.

5. A seaman having a testimonial under the hand and seal of a justice of the peace, setting forth the time and place In what case not to be deemed vagrants.

place of landing, and the place to which he is to paſs, and limiting the time of his paſſage, ſhall not be deemed a vagrant, while he continues in the direct way, and within the time limited. 17 *G.* 2. *c.* 5. *ſ.* 3.

In what caſe not to gain ſettlements by notice.

6. No ſeaman employed in his majeſty's ſervice, ſhall have any ſettlement in any pariſh, port town, or other town, by delivery and publication of a notice in writing, unleſs it be after his diſmiſſion out of his majeſty's ſervice. 3 *W.* *c.* 11.

Making diſturbance in the yards.

7. The treaſurer, controller, ſurveyor, clerk of the acts, or any of the commiſſioners of the navy, may puniſh ſeamen and others, making diſturbances in the yards or offices, and may bind them to the good behaviour, and to appear at the next aſſizes, or general quarter ſeſſions, to be proſecuted for ſuch offence. 1 *G. ſt.* 2. *c.* 25. *ſ.* 1, 2.

Perſonating ſeamen in his majeſty's ſervice, or their executors or adminiſtrators.

8. By the 31 *G.* 2. *c.* 10. Whoſoever willingly and knowingly ſhall perſonate or falſly aſſume, or procure any other to perſonate or falſly aſſume, the name or character of any officer, ſeaman, or other perſon, intitled or ſuppoſed to be intitled to any wages, pay, or other allowances of money, or prize money, for ſervice done on board of any of his majeſty's ſhips or veſſels; or willingly and knowingly ſhall perſonate or falſly aſſume the name or character of the executor or adminiſtrator, wife, relation, or creditor of any ſuch officer or ſeaman or other perſon, in order to receive any wages, pay, or other allowances of money or prize money as aforeſaid; or ſhall forge or counterfeit, or procure to be forged or counterfeited, any letter of attorney, bill, ticket, certificate, aſſignment, laſt will, or any other power or authority, in order to receive any ſuch wages, pay, or other allowances of money or prize money as aforeſaid; or ſhall willingly and knowingly take a falſe oath, or procure any other perſon to take a falſe oath, to obtain the probate of any will or letter of adminiſtration, in order to receive the payment of any wages, pay, or other allowances of money or prize money, due or that were ſuppoſed to be due to any ſuch officer, ſeaman, or other perſon as aforeſaid, who has really ſerved, or was ſuppoſed to have ſerved, on board of any of his majeſty's ſhips or veſſels; every ſuch perſon ſo offending ſhall be guilty of felony without benefit of clergy. *ſ.* 4.

Out penſioners of Greenwich hoſpital.

9. In like manner, by the 3 *G.* 3. *c.* 16. Whoever ſhall perſonate or falſly aſſume the name and character of an out penſioner of *Greenwich* hoſpital, in order to receive the out penſion due to him, or procure any other to do the

the ſame, ſhall be guilty of felony without benefit of clergy.

And in order to receive their penſion half yearly as it ſhall become due, ſuch penſioners ſhall, together with the printed bill delivered to them by the commiſſioners, produce a certificate under the hand of the miniſter and churchwardens where they reſide, that ſuch perſon is, to the beſt of their knowledge and belief, the perſon named in ſuch bill.

Concerning ſeamen in the merchants ſervice.

10. Concerning ſeamen in the merchants ſervice, it is enacted by the 2 *G.* 2. *c.* 36. that no maſter of a ſhip ſhall proceed on a voyage, without agreement in writing with each mariner (apprentices excepted), to be ſigned by ſuch mariner, for wages; on pain of 5 *l.* for each mariner, on conviction before one juſtice by the oath of one witneſs, to be levied by diſtreſs; for want of diſtreſs, to be committed till paid. *ſ.* 1, 2.

And if the mariner *deſerts* after he hath ſigned the agreement, he ſhall forfeit the wages due to him at the time of deſerting; and on application from the maſter, owner, or commander of the ſhip, ſuch juſtice may cauſe him to be apprehended, and if he ſhall refuſe to proceed on the voyage, without ſufficient reaſon to the ſatisfaction of the juſtice, the ſaid juſtice ſhall commit him to the houſe of correction, there to be kept to hard labour, not exceeding 30 days, nor leſs than 14 days. *ſ.* 3, 4.

And if any ſeaman abſent himſelf from his ſhip without leave, he ſhall forfeit for every day's abſence two days pay to *Greenwich* hoſpital, to be deducted by the maſter out of his wages; the ſame to be entred in a book, and ſigned by the maſter and two officers of the ſhip; and the ſame to be paid over to the officer who collects the 6 *d.* a month deducted out of ſeamens wages for the ſaid hoſpital. *ſ.* 5, 9.

And if any ſeaman not entring into the king's ſervice, ſhall leave his ſhip before he hath a diſcharge in writing, he ſhall forfeit one month's pay, in like manner. *ſ.* 6.

And the maſter ſhall pay the ſeaman's wages, if demanded, in 30 days after the ſhip is entred at the cuſtom houſe, or at the time of diſcharge, which ſhall firſt happen, deducting out of ſuch wages the aforeſaid forfeitures; on pain of 20 *s.* to ſuch ſeaman, to be recovered, in like manner as his wages. *ſ.* 7.

Note; The law relating to the recovery of ſuch wages, ſo far as proviſion is made for the ſame by any act of parliament, is treated of under title **Servants.**

[The ſaid act of the 2 *G.* 2. *c.* 36. was at firſt but temporary, and continued from time to time; but by the

2 *G.* 3. *c.* 31. it is made perpetual, and extended to his majeſty's colonies in *America*; and the forfeitures there, to *Greenwich* hoſpital, are to be paid to ſuch perſon as the commiſſioners of the admiralty ſhall direct: maſter deducting, and not paying the ſame in 3 months, ſhall forfeit treble value, to the ſaid hoſpital.]

Search Warrant.

ALthough it is not unuſual for juſtices to grant general warrants, to ſearch all ſuſpected places for ſtolen goods, and there is a precedent in *Dalton* requiring the conſtable to ſearch *all ſuch ſuſpected places as he and the party complaining ſhall think convenient*; yet ſuch practice is generally condemned by the beſt authorities.

Thus lord *Hale*, in his pleas of the crown, ſays, a general warrant to ſearch for felons or ſtolen goods, is not good. *H. Pl.* 93.

Mr. *Hawkins* ſays, I do not find any good authority, that a juſtice can juſtify ſending a general warrant, to ſearch all ſuſpected houſes in general for ſtolen goods: becauſe ſuch warrant ſeems to be illegal in the very face of it; for it would be extremely hard, to leave it to the diſcretion of a common officer, to arreſt what perſons, and ſearch what houſes he thinks fit; and if a juſtice cannot legally grant a blank warrant for the arreſt of a ſingle perſon, leaving it to the party to fill up, ſurely he cannot grant ſuch a general warrant, which might have the effect of an hundred blank warrants. 2 *Haw.* 82, 84.

Again, lord *Hale*, in his hiſtory of the pleas of the crown, expreſſeth himſelf thus; I do take it, that a general warrant to ſearch in all ſuſpected places, is not good; but only to ſearch in ſuch particular places, where the party aſſigns before the juſtice his ſuſpicion, and the probable cauſe thereof; for theſe warrants are judicial acts, and muſt be granted upon examination of the fact. 2 *H. H.* 150.

And therefore, he ſays, he takes it that thoſe general warrants dormant, which are many times made before any felony committed, are not juſtifiable, for it makes the party to be in effect the judge; and therefore ſearches made by pretence of ſuch general warrants, give no more power to

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the officer or party, than what they may do by law without them. 2 *H. H.* 150.

Likewiſe, upon a *bare ſurmiſe*, a juſtice cannot make a warrant to break any man's houſe, to ſearch for a felon, or for ſtolen goods; for the juſtices being created by act of parliament, have no ſuch authority granted to them by any act of parliament; and it would be full of inconvenience, that it ſhould be in the power of any juſtice of the peace, being a judge of record, upon a bare ſuggeſtion to break the houſe of any perſon, of what ſtate, quality, or degree ſoever, either in the day or night, upon ſuch ſurmiſes. 4 *Inſt.* 177.

But in caſe of a complaint, and oath made, of goods ſtolen, and that the party ſuſpects the goods are in ſuch a houſe, and ſhews the cauſe of his ſuſpicion; the juſtice may grant a warrant to ſearch in thoſe ſuſpected places mentioned in his warrant, and to attach the goods, and the party in whoſe cuſtody they are found, and bring them before him, or ſome other juſtice, to give an account how he came by them, and further to abide ſuch order as to law ſhall appertain. 2 *H. H.* 113, 150.

But in that caſe, lord *Hale* ſays, it is convenient that ſuch warrant do require the ſearch to be made in the day time; and though I will not affirm (ſays he) that they are unlawful without ſuch reſtriction, yet they are very inconvenient without it; for many times, under pretence of ſearches made in the night, robberies and burglaries have been committed, and at beſt it creates great diſturbances. 2 *H. H.* 150.

But in caſe not of probable ſuſpicion only, but of poſitive proof, it is right to execute the warrant in the night time, leſt the offenders and goods alſo be gone before morning. *Barl.* Search War.

Furthermore, ſuch warrant ought to be directed to the conſtable, or other publick officer, and not to any private perſon; though it is fit the party complaining ſhould be preſent and aſſiſtant, becauſe he knows his goods. 2 *H. H.* 150.

So much for *granting* a ſearch warrant; Next touching the *execution* of it.

Whether the ſtolen goods are in a ſuſpected houſe or not, the officer and his aſſiſtants in the day time may enter, the doors being open, to make ſearch, and it is juſtifiable by this warrant. 2 *H. H.* 151.

If the door be ſhut, and upon demand it be refuſed to be opened by them within, if the ſtolen goods be in the

houſe, the officer may break open the door. 2 *H. H.* 151.

If the goods be not in the houſe, yet it ſeems the officer is excuſed that breaks open the door to ſearch, becauſe he ſearched by warrant, and could not know whether the goods were there, till ſearch made; but it ſeems the party that made the ſuggeſtion is puniſhable in ſuch caſe; for as to him the breaking of the door is *in eventu* lawful or unlawful, to wit, lawful if the goods are there, unlawful if not there. 2 *H. H.* 151.

On the *return* of the warrant executed, the juſtice hath theſe things to do:

As touching the *goods* brought before him, if it appear they were not ſtolen, they are to be reſtored to the poſſeſſor; if it appear they were ſtolen, they are not to be delivered to the proprietor, but depoſited in the hand of the ſheriff or conſtable, to the end the party robbed may proceed, by indicting and convicting the offender, to have reſtitution. 2 *H. H.* 151.

As touching the *party* that had the cuſtody of the goods; if they were not ſtolen, then he is to be diſcharged; if ſtolen, but not by him, but by another that ſold or delivered them to him, if it appear that he was ignorant that they were ſtolen, he may be diſcharged as an offender, and bound over to give evidence as a witneſs againſt him that ſold them; if it appear he was knowing they were ſtolen, he muſt be committed or bound over to anſwer the felony. 2 *H. H.* 152.

Form of a ſearch warrant.

Weſtmorland. { To the conſtable of ——.

WHEREAS *it appears to me* J. P. *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the ſaid county, by the information on oath of* A. I. *of* —— *in the county aforeſaid, yeoman, that the following goods, to wit,* —— *have within two days laſt paſt, by ſome perſon or perſons unknown, been feloniouſly taken, ſtolen, and carried away, out of the houſe of the ſaid* A. I. *at* —— *aforeſaid, in the county aforeſaid; and that the ſaid* A. I. *hath probable cauſe to ſuſpect, and doth ſuſpect, that the ſaid goods, or part thereof, are concealed in the dwelling houſe of* A. O. *of* —— *in the ſaid county, yeoman: Theſe are therefore, in the name of our ſaid lord the king, to authorize and require you, with neceſſary*

ſary and proper aſſiſtants, to enter in the day time into the ſaid dwelling houſe of the ſaid A. O. *at* ——— *aforeſaid, in the county aforeſaid, and there diligently to ſearch for the ſaid goods; and if the ſame, or any part thereof, ſhall be found upon ſuch ſearch, that you bring the goods ſo found, and alſo the body of the ſaid* A. O. *before me, or ſome other of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, to be diſpoſed of and dealt withal according to law. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Self defence. See Homicide.
Self murder. See Homicide.

Servants.

Under this title are alſo comprehended labourers, journeymen, artificers, and other workmen.

Concerning the *ſettlement* of ſervants, ſee title Poor.

I. Who may be compelled to ſerve, and for what term.
II. Rating of wages.
III. Time of working for labourers.
IV. Working in harveſt.
V. Leaving work unfiniſhed.
VI. Teſtimonial.
VII. Servant fleeing into another ſhire.
VIII. Servant aſſaulting his maſter.
IX. How far the maſter is allowed to beat the ſervant.
X. How far the maſter may beat another in defence of his ſervant, or the ſervant in defence of his maſter.
XI. Servants firing houſes.

XII. Servant ſtealing his maſter's goods.

XIII. Diſputes between ſilk maſters and their workmen.

XIV. Diſputes between clothiers and their workmen, by divers ſtatutes.

XV. Diſputes between maſters and ſervants in the woollen, linen, fuſtian, cotton, and iron manufactures; by the 1 An. ſt. 2. c. 18. & 13 G. 2. c. 8.

XVI. Diſputes between maſters and their workmen, in the leathern manufactures; by the 13 G. 2. c. 8.

XVII. Diſputes between maſters and their workmen, in the making of hats, or in the woollen, linen, fuſtian, cotton, iron, leather, furr, hemp, flax, mohair, or ſilken manufactures; by the 22 G. 2. c. 27.

XVIII. Diſputes between maſters and their workmen, in the manufactures of clocks and watches; by the 27 G. 2. c. 7.

XIX. Diſputes between maſters and ſervants in huſbandry, artificers, handicraftſmen, miners, colliers, keelmen, pitmen, glaſſmen, potters, and other labourers; by the 20 G. 2. c. 19.

XX. Shipmaſters and their ſeamen.

XXI. Taylors and their workmen within the bills.

XXII. Shoemakers and their workmen within the bills.

XXIII. How far the maſter is anſwerable for the ſervant.

I. Who may be compelled to ſerve, and for what term.

1. NO perſon ſhall retain, or be retained, to work for any leſs term than one whole year, in any of the crafts of clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, ſheremen, dyers, hoſiers, taylors, ſhoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, ſmiths, farriers, curriers, ſadlers, ſpurriers, turners, cappers, hatmakers, or feltmakers, bowyers, fletchers, arrow-head makers, butchers, cooks, or millers. 5 *El. c.* 4. *ſ.* 3. Who compellable to ſerve in trades.

And every perſon unmarried, and every married perſon being under the age of 30 years, and having been brought up in any of the ſaid trades, or that hath uſed any of them by the ſpace of 3 years or more; and not having an eſtate of inheritance or for life of 40 *s.* a year, not worth 10 *l.* in goods, and ſo allowed by two juſtices of the county where he hath moſt commonly inhabited for one year, under their hands and ſeals, or by the mayor of a town corporate and two aldermen, or (if there are no aldermen) two diſcreet burgeſſes; nor being retained with any perſon in huſbandry, nor in any of the aforeſaid trades; nor being lawfully retained in houſhold, or in any office with any nobleman, gentleman, or other according to law; nor having a convenient farm or other holding in tillage; —— ſhall during the time that he ſhall be ſo unmarried, or under the ſaid age of 30 years, on requeſt made by any perſon uſing the art and miſtery wherein the ſaid perſon hath been exerciſed, be retained and ſerve, on pain as hereafter followeth. *ſ.* 11.

And no perſon which ſhall retain any ſervant, ſhall put away his ſaid ſervant, and no perſon retained according to this ſtatute ſhall depart before the end of his term, unleſs it be for ſome reaſonable cauſe, to be allowed before one juſtice or mayor to whom the party grieved ſhall complain: And no maſter ſhall put away any ſuch ſervant at the end of his term, nor ſhall any ſuch ſervant depart at the end of his term without one quarter's warning, on pain hereafter enſuing. *ſ.* 5, 6.

2. Every perſon between the age of 12 and 60, not being lawfully retained, nor apprentice with any fiſherman or mariner haunting the ſeas; nor being in ſervice with any kidder or carrier of corn, grain, or meal, for proviſion of the city of *London*; nor with any huſbandman in huſbandry; nor in any city, town corporate, or market town, in any the arts limited by this ſtatute to have apprentices; nor being In huſbandry.

retained by the year, or half year at leaſt; for getting, melting, fining, working, trying, making of any ſilver, tin, lead, iron, copper, ſtone, ſea coal, ſtone coal, moor coal, or cherk coal; nor being occupied in the making of glaſs; nor being a gentleman born, nor being a ſtudent or ſcholar in any of the univerſities, or ſchool; nor having an eſtate of inheritance, or for term of life, of 40*s.* a year; nor worth 10 *l.* in goods; nor having a father or mother then living, or other anceſtors, whoſe heir apparent he is, having lands of 10 *l.* a year, or goods worth 40. *l*; nor being a neceſſary or convenient officer or ſervant lawfully retained as aforeſaid; nor having a convenient farm or holding, whereon to employ his labour; nor being otherwiſe lawfully retained according to the true meaning of this ſtatute,——ſhall be compelled to be retained to ſerve in huſbandry by the year, with any perſon that keepeth huſbandry, and will require any ſuch perſon ſo to ſerve, within the ſame ſhire where he ſhall be ſo required. 5 *El. c.* 4. *ſ.* 7.

And if any perſon, after he hath retained any ſervant, ſhall put him away before the end of his term, unleſs it be for ſome reaſonable cauſe, to be allowed as is aforeſaid; or ſhall put him away at the end of his term, without a quarter's warning; unleſs he can prove by two witneſſes ſuch reaſonable cauſe, or ſuch quarter's warning, before the judges of aſſize, juſtices of the peace in ſeſſions, or the mayor and two aldermen (or two diſcreet burgeſſes if there are no aldermen) in corporations,—he ſhall forfeit 40*s.* *ſ.* 8.

Penalties.

3. And if any ſervant retained according to this ſtatute ſhall depart from his ſervice before the end of his term, unleſs it be for ſome reaſonable cauſe to be allowed as aforeſaid, or at the end of his term depart without a quarter's warning before two witneſſes; or if any perſon bound to ſerve in huſbandry or other arts above remembred, by the year or otherwiſe, do on requeſt refuſe to ſerve for the wages to be limited by this ſtatute; or promiſe to ſerve, and do not ſerve,———then, on complaint and conviction before two juſtices, or mayor and two aldermen (or two diſcreet burgeſſes where there are no aldermen) he ſhall be committed to ward until he ſhall be bound to ſerve and continue for the wages that ſhall be then limited; and to be diſcharged upon his delivery, without any fee to the gaoler. 5 *El. c.* 4. *ſ.* 9.

And the forfeitures not otherwiſe appointed by this act, ſhall be half to the king, and half to him that ſhall ſue in any

any of the king's courts of record, or before the juſtices of oyer and terminer, or before any other juſtice before remembred; and the ſaid juſtices, or two of them (1 Q.) and the ſaid mayors or other head officers, ſhall have power to hear and determine all offences againſt this ſtatute, as well upon indictment in the ſeſſions of the peace, as upon information, action of debt, or bill of complaint; and ſhall yearly in *Michaelmas* term eſtreat the forfeitures into the exchequer, in like manner as other eſtreats. *ſ.* 39.

And all fines and forfeitures which ſhall ariſe by reaſon of any offences in this act, within any city or town corporate, ſhall be levied by ſuch perſon as ſhall be appointed by the mayor or other head officer, to the uſe of the ſame city or town corporate, as other fines and forfeitures by the charter. *ſ.* 45.

Women compellable to ſerve.

4. Two juſtices (or the mayor or other head officer of a town corporate, and two aldermen, or two diſcreet burgeſſes if there be no aldermen) may appoint any ſuch woman as is of the age of 12 years, and under 40, and unmarried, and forth of ſervice, as they ſhall think meet, to ſerve, or be retained to ſerve by the year, or by the week or day, for ſuch wages, and in ſuch reaſonable ſort and manner as they ſhall think meet; and if any ſuch woman ſhall refuſe ſo to ſerve, they may commit her to ward, until ſhe ſhall be bounden to ſerve as is aforeſaid. 5 *El. c.* 4. *ſ.* 24.

And if a woman who is a ſervant ſhall marry, yet ſhe muſt ſerve out her time, and her huſband cannot take her out of her maſter's ſervice. *Dalt. c.* 58. *Wood b.* 1. *c.* 6.

Retainer to be for a year.

5. If a perſon retain a ſervant generally, without expreſſing any time, the law ſhall conſtrue it to be for one year, for that retainer is according to law. 2 *Inſt.* 42.

And if a man retaineth another, except the retainer be according to the ſtatute, it ſeemeth to be void; unleſs it be by indenture, and then being by deed, he is bound by his covenant. *Dalt. Old Ed. c.* 31.

Retainer is the beginning of ſervice.

6. By the retainer, the ſervant is in ſervice preſently by the law, although he cometh not into his maſter's ſervice in deed. *Dalt. c.* 58.

Infant hiring.

7. If a ſervant be within age, his agreement with his maſter to his diſadvantage ſhall not prejudice him. *Dalt. c.* 58.

Married perſon hiring.

8. If a married man and his wife do bind themſelves to ſerve, they ſhall be compelled to ſerve according to their covenant or agreement. *Dalt. c.* 58.

9. If

Servant falling sick.

9. If a servant retained for a year, happen within the time of his service to fall sick, or to be hurt or disabled by the act of God, or in doing his master's business; yet the master must not therefore put such servant away, nor abate any part of his wages for such time. *Dalt. c.* 58.

II. Rating of wages.

Rating wages.

1. The justices of every shire, riding, and liberty, or the more part of them, being then resiant within the same, and the sheriff if he conveniently may, and every mayor and other head officer within any city or town corporate, wherein is any justice of the peace within the limits of the said city or town corporate, and of the said corporation, shall yearly in *Easter* sessions, or within six weeks next after, assemble, and call unto them such discreet and grave persons as they shall think meet, and having respect to the plenty or scarcity of the time, and other circumstances, shall have authority to limit, rate, and appoint the wages, as well of such the said artificers, handicraftsmen, husbandmen, or any other labourer, servant, or workman, whose wages in times past have been by any law or statute rated and appointed, as also the wages of all other labourers, artificers, workmen, or apprentices of husbandry, which have not been rated, as they shall think meet by their discretions, to be rated, limited, or appointed by the year, or by the day, week, month, or otherwise, with meat and drink, or without meat and drink, and what wages every workman or labourer shall take by the great, for mowing, reaping, or threshing of corn and grain, or for mowing or making of hay, or for ditching, paving, railing, or hedging, by the rod, perch, lugg, yard, pole, rope, or foot, and for any other kind of reasonable labour or service. 5 *El. c.* 4. *s.* 15.

And by the 1 *J. c.* 6. The justices, or the more part of them, resiant in any riding, liberty or division, where the sessions are severally kept, shall have power to rate the wages within such division, as if the same were done in the general sessions for the county. *s.* 5.

And by the same statute of 1 *J. c.* 6. The said act of 5 *El.* shall extend to the rating of wages of all labourers, weavers, spinsters, and workmen or workwomen whatsoever, either working by the day, week, month, year, or taking any work by the great or otherwise. *s.* 3.

But

But no clothier being a juſtice of the peace in any precinct or liberty, ſhall be a rater of wages for the making of cloth; and if there be not above two juſtices in ſuch precinct, but ſuch as are clothiers, the wages ſhall be rated by the major part of the common council of ſuch precinct, and ſuch juſtices (if any there be) as are not clothiers. *id. ſ.* 9.

And if any juſtice reſiant within the county, or mayor, ſhall be abſent at the rating of wages, and not hindered by ſickneſs or other lawful cauſe, to be allowed by the juſtices then aſſembled for rating of wages, upon the oath and affidavit of ſome credible perſon, he ſhall forfeit to the king 10 *l.* to be recovered in the ſeſſions or other court of record, by indictment or otherwiſe. 5 *El. c.* 4. *ſ.* 17.

And the juſtices ſhall yearly, between *Sept.* 29. and *Dec.* 25. and between *March* 25. and *June* 24. make ſpecial and diligent enquiry of the good execution of this ſtatute, and puniſh defaulters; and ſhall have for every day that they ſit about the execution thereof (not exceeding three days at a time) 5 *s.* each, out of the forfeitures due to the king. *ſ.* 37, 38.

2. By the aforeſaid act of 5 *El.* the rates were to be certified into the chancery; but by the 1 *J. c.* 6. they need not to be certified into the chancery, but ſhall be kept amongſt the records of the county or town corporate. *ſ.* 8. Rates to be proclaimed.

And after the ſaid rates are made and ingroſſed in parchment, under the hands and ſeals of the perſons having authority to rate the ſame, the ſheriff, or mayor, may cauſe proclamation thereof to be made, in ſo many places as to them ſhall ſeem convenient, and every perſon ſhall be bound to obſerve the ſame. *id. ſ.* 6.

3. If any perſon upon the proclamation publiſhed, ſhall directly or indirectly retain or keep any ſervant, workman, or labourer, or ſhall give any more or greater wages, or other commodity, than ſhall be ſo appointed in the ſaid proclamation; he ſhall on conviction before any of the juſtices or other head officers above remembred, be impriſoned for ten days without bail, and ſhall forfeit 5 *l.* half to the king, and half to him that ſhall ſue before the ſaid juſtices in their ſeſſions. 5 *El. c.* 4. *ſ.* 18. Giving more than is rated.

But yet maſters may reward a well deſerving ſervant, over and above his wages, according as he ſhall deſerve, ſo it be not by way of promiſe or agreement upon his retainer. *Dalt. c.* 58.

4. And

Taking more.

4. And every perſon that ſhall be ſo retained and take wages contrary to the ſaid ſtatute of the 5 *El.* or to the ſaid proclamation, and ſhall be thereof convicted before the juſtices aforeſaid, or any two of them, or before the mayor or other head officers aforeſaid, he ſhall be impriſoned for 21 days without bail. 5. *El. c.* 4. *f.* 19.

Contract to the contrary, void.

5. And every retainer, promiſe, gift, or payment of wages, or other thing, contrary to the ſaid act, and every writing and bond to be made for that purpoſe, ſhall be void. 5 *El. c.* 4. *f.* 20.

Paying leſs than is rated.

6. If any clothier, or other, ſhall refuſe to pay ſo much wages to their weavers, ſpinſters, workmen, or workwomen, as ſhall be rated; and be convicted thereof by confeſſion, or oath of two witneſſes, at the aſſizes, or ſeſſions, or before any two juſtices (1 *Q.*); he ſhall forfeit 10*s.* to the party grieved, to be levied by diſtreſs and ſale. 1 *J. c.* 6. *f.* 7.

Ordering the payment of wages.

7. *M.* 1 *An. Q.* and *Gouche.* An order was made by the juſtices for payment of wages, for work and labour in huſbandry: The exception was, That it did not appear to be ſtatute wages, and ſuch only are within their juriſdiction. By the court: Though the ſtatute gives them a power only to ſet the rate for wages, and not to order payment; yet grafting hereupon, they have alſo taken upon them to order payment, and the courts of law are indulgent in remedies for wages, and therefore they would intend it ſuch wages as were within the ſtatute, unleſs the contrary appear upon the face of the order. 2 *Salk.* 441.

And in the caſe of *K.* and *Gregory*, 2 *Salk.* 484. There was an order to pay 40*s.* for wages generally; and becauſe it was not ſaid for wages in huſbandry, it was moved to quaſh it, for that the juſtices can only ſettle wages in huſbandry: But by the court; We will intend it for ſuch wages, ſince the contrary does not appear.

But in the caſe of *K.* and *Helling*, *M.* 3 *G.* There was an indictment for not paying ſervant's wages, reciting an order of two juſtices, whereby it appeared, that 9 *l.* was due, which the defendant refuſed to pay, having had notice of the order. It was moved to quaſh the indictment, becauſe it doth not ſet out the labour of the ſervant, and is only generally for wages; the juſtices have only juriſdiction in caſes of huſbandry; and the order ought to ſhew, that this was a matter within their juriſdiction. By *Eyre* J. the practice is, if an order be for paying wages, it is ſuppoſed to be ſuch as the juſtices have power over. But *Parker* Ch. J. and *Pratt* J. were of another opinion. And

in

in the next term following the indictment was quashed. *Str.* 8.

And in the case of *K.* and *Clegg*, *M.* 8 *G.* It was said by *Fortescue* J. that in the case of servants wages, although jurisdiction is given only in husbandry, yet orders have been held good, where it did not appear that the service was in husbandry; for the court said they would intend it so, unless the contrary appeared. But by *Pratt* Ch. J. This was always wondered at, and in my lord *Parker*'s time it was actually contradicted in the case of *K.* and *Helling*. Str. 475.

In *Bycraft*'s case, 5 *Mod.* 140. A justice made an order for payment of a *seaman*'s wages; but in an action brought against him, the plaintiff recovered 30 *l.* damages.

M. 8 *An.* *Q.* and *Cecill.* An order upon a master to pay wages in husbandry, was quashed, because it was made upon the servant's oath, which is against law, and no power given in the statute to admit such oath as evidence. L. *Raym.* 1305.

But by other statutes hereafter following, such oath is allowed as evidence; but upon this statute it was not necessary, because in order to intitle the servant to wages, he needed not to prove how much his master had agreed to pay him, for that was fixed by the justices, but only how long he had served, and then the wages followed of course; and this might be proved by many others as well as by himself.

III. The time of working for labourers.

All artificers and labourers, being hired for wages, by the day, or week, shall, betwixt the midst of *March* and *September*, be and continue at their work, from five in the morning till after seven at night (except in the time of breakfast, dinner, or drinking, which shall not exceed two hours and an half in a day, that is to say, at every drinking one half hour, for his dinner one hour, and for his sleep, when he is allowed to sleep, that is, from the midst of *May* to the midst of *August*, half an hour at the most, and at every breakfast one half hour:) And all the said artificers and labourers, between the midst of *September* and the midst of *March*, shall be and continue at their work, from the spring of the day in the morning, until night, except it be in the time before appointed for breakfast and dinner; on pain to forfeit 1 *d.* for every hour's absence, to be deducted out of his wages. 5 *El. c.* 4. *s.* 12.

IV. Working

IV. Working in harveſt.

1. In the time of hay or corn harveſt, the juſtices of the peace, and every of them, and alſo the conſtable or other head officer of every townſhip, upon requeſt, and for avoiding of the loſs of any corn, grain, or hay, ſhall cauſe all ſuch artificers and perſons as be meet to labour, by the diſcretions of the ſaid juſtices or conſtables, or other head officers, or by any of them, to ſerve by the day, for the mowing, reaping, ſhearing, getting, or inning of corn, grain, and hay, according to the ſkill and quality of the perſon; and that none of the ſaid perſons ſhall refuſe to do, on pain to ſuffer impriſonment in the ſtocks, by the ſpace of two days and one night: And the conſtable of the town, or other head officer, on complaint to him made, ſhall ſet him in the ſtocks accordingly, on pain of 40*s.* half to the king, and half to him that ſhall ſue in the ſeſſions, or other court of record; and if it is in a town corporate, then to the uſe of ſuch town, as other fines by the charter. 5 *El. c.* 4. *ſ.* 22.

Provided, that all perſons of the counties where they have accuſtomed to go into other ſhires for harveſt work, and having at that time no harveſt work ſufficient in the ſame town or county where they dwelt in the winter laſt paſt, bringing with them a teſtimonial under the hand and ſeal of one juſtice of the ſhire, or other head officer of the town or place that they come from, teſtifying the ſame, for which he ſhall pay not above 1 *d.* (other than ſuch perſons as ſhall be retained in ſervice) may repair, in harveſt of hay or corn, into any other county or place for the only mowing, reaping, and getting of hay, corn, or grain, and for the only working of harveſt works, as they might have done before the making of this act. *ſ.* 23.

2. And by the 13 & 14 *C.* 2. *c.* 12. A perſon may go abroad to work in harveſt, carrying with him a certificate from the miniſter and one churchwarden or overſeer, that he hath a dwelling houſe or place in which he inhabits, and hath left wife and children, or ſome of them there (or otherwiſe as his condition ſhall require) and declaring him an inhabitant there. *ſ.* 3.

And by the vagrant act of the 17 *G.* 2. Perſons carrying with them ſuch certificate, ſhall not be liable to be apprehended as vagrants.

V. Leaving

V. Leaving work unfiniſhed.

Every artificer and labourer, that ſhall be lawfully retained in and for the building or repairing of any church, houſe, ſhip, mill, or other piece of work taken in great, in taſk, or in groſs, or that ſhall take upon him to make or finiſh any ſuch work, ſhall continue and not depart from the ſame, unleſs it be for not paying of his wages or hire agreed on, or otherwiſe lawfully taken or appointed to ſerve the king, or for other lawful cauſe, or without licence of the maſter or owner of the work, or of him that hath the charge thereof, before the finiſhing of the ſaid work, on pain of impriſonment for a month without bail or mainprize, and the forfeiture of 5 *l.* to the party from whom he ſhall ſo depart, for the which the ſaid party may have his action of debt in any of the king's courts of record, over and beſides ſuch ordinary coſts and damages as may or ought to be recovered by the common laws, for ſuch offence. 5 *El. c.* 4. *ſ.* 13.

And no other artificer or labourer, retained in any ſervice, to work for the king, or any other perſon, ſhall depart from his ſaid majeſty, or from ſuch other perſon, until the work be finiſhed, if the perſon ſo retaining the artificer or labourer ſo long will have him, and pay him his wages: on pain of impriſonment for one month. *ſ.* 14.

VI. Teſtimonial.

None of the ſaid perſons retained in huſbandry, or in any the arts above remembred, after the time of his retainer expired, ſhall depart forth of one city, town, or pariſh, to another; nor out of the lathe, rape, wapentake, or hundred; nor out of the county where he laſt ſerved, to ſerve in any other city, town corporate, lathe, rape, wapentake, hundred, or county; unleſs he have a teſtimonial under the ſeal of the ſaid city or town corporate, or of the conſtable or other head officer, and of two other honeſt houſeholders of the city, town, or pariſh, where he laſt ſerved: Which teſtimonial ſhall be in this form:

Memorandum, That A. B. *late ſervant to* C. D. *of* E. *huſbandman, or taylor,* &c. *in the ſaid county, is licenſed to depart from his ſaid maſter, and is at his liberty to ſerve elſewhere, according to the ſtatute in that caſe made and provided.*

In

In witneſs whereof, &c. *Dated the day, month, year, and place*, &c. *of the making thereof:*

Which teſtimonial ſhall be delivered to the ſaid ſervant, and alſo regiſtred by the miniſter of the pariſh where the maſter dwells, taking 2 *d.* for the ſame. 5 *El. c.* 4. *ſ.* 10.

And no perſon that ſhall depart out of a ſervice, ſhall be retained or accepted into any other ſervice, without ſhewing (before his retainer) ſuch teſtimonial, to the chief officer of the town corporate, and in every other town and place, to the conſtable, curate, churchwarden, or other head officer; on pain that every ſuch ſervant ſo departing without ſuch teſtimonial, ſhall be impriſoned till he procure one; which if he cannot do in 21 days, he ſhall be whipped and uſed as a vagabond, according to the laws in ſuch caſe provided; and every perſon retaining ſuch ſervant, without ſhewing ſuch teſtimonial, ſhall forfeit 5 *l.* half to the king, and half to him that ſhall ſue in the ſeſſions or other court of record; and if any ſuch perſon be taken with a counterfeit teſtimonial, then to be whipped as a vagabond. *ſ.* 11.

By the common law, if a man retained another man's ſervant, not knowing that he was retained with him, this ignorance excuſed him of the offence; but now the maſter may, and muſt take notice, whether he hath a teſtimonial or no; otherwiſe, if he hath no teſtimonial, ſuch maſter is liable by this ſtatute to the penalty of 5 l. *Dr. & St.* 149.

VII. Servant fleeing into another ſhire.

If any ſervant of huſbandry, or of any art, ſcience, or occupation aforeſaid, flee into another ſhire, it ſhall be lawful for the juſtices of the peace, and the ſaid mayors or other head officers being juſtices of the peace, to iſſue writs of *capias*, directed to the ſheriffs of the counties, or other head officers of the places whither he ſhall flee, to take his body, returnable before them at what time ſhall pleaſe them; ſo that if they come by ſuch proceſs, they be put in priſon till they ſhall find ſufficient ſurety well and honeſtly to ſerve their maſters. 5 *El. c.* 4. *ſ.* 47.

And by the 24 *G.* 2. *c.* 55. If a juſtice ſhall iſſue a warrant againſt ſuch perſon, and he ſhall eſcape into another ſhire; the conſtable or other perſon, on having the warrant indorſed by a juſtice in ſuch other ſhire, may arreſt him there, and carry him before a juſtice in ſuch other ſhire, if the offence is bailable, to find bail, or elſe ſhall carry him back before a juſtice in the ſhire from whence the warrant did firſt iſſue.

VIII. Servant

VIII. Servant assaulting his master.

If any servant, workman, or labourer, shall wilfully or maliciously make an assault or affray upon his master or mistress, or upon any other having charge or oversight of such servant or labourer, or over the work wherein he is hired to work, and shall be thereof convicted before any two justices, or other head officer aforesaid, by confession, or oath of two witnesses, he shall be imprisoned for a year, or less, by the discretion of two justices out of a town corporate, and in a town corporate of the mayor or other head officer with two others of the discreetest persons of the same corporation: And if the offence shall require further punishment, then to receive such other open punishment so as it extend not to life or limb, as the justices in sessions, or the mayor or other head officer, and six or four at least of the discreetest persons of the corporation, shall think convenient for the quality of the offence. 5 *El.* *c.* 4. *s.* 21.

IX. How far the master is allowed to beat his servant.

The master is allowed by law, with moderation to chastise his servant. *Dalt.* *c.* 58.

And where a master in correcting his servant, happens to occasion his death, it shall be deemed homicide by misadventure; yet if in his correction he be so barbarous, as to exceed all bounds of moderation, and thereby occasion the servant's death, it is manslaughter at the least; and if he make use of an instrument improper for correction, and apparently endangering the servant's life, as an iron bar, or sword, or kick him to the ground, and then stamp on his belly and kill him, it is murder. 1 *Haw.* 73, 74.

And if the servant shall depart out of his master's service, and the master happen after to lay hold of him, yet the master in this case may not beat or forcibly compel his said servant against his will to return or tarry with him, or do his service; but either he must complain to the justices, for his servant's departure, or he may have an action of covenant against his servant. *Dalt.* *c.* 121.

X. How far the maſter may beat another in defence of his ſervant, or the ſervant in defence of his maſter.

According to ſome opinions, a maſter ſhall not forfeit a recognizance of the peace, for beating another in defence of his ſervant, nor the ſervant for beating another in defence of his maſter. 1 *Haw.* 131.

But in the caſe of *Leeward* and *Baſilee*, *M.* 7 *W.* It was held by the court, that a ſervant may juſtify an aſſault in defence of his maſter, but not a maſter in defence of his ſervant; becauſe he might have an action for the loſs of his ſervice. 1 *Salk.* 407.

XI. Servants firing houſes.

If any menial or other ſervant, thro' negligence or careleſſneſs, ſhall fire or cauſe to be fired any dwelling houſe or out houſe, and be convicted thereof by oath of one witneſs, before two juſtices, he ſhall forfeit 100 *l.* to the churchwardens, to be diſtributed amongſt the ſufferers by ſuch fire; and if he ſhall not pay the ſame immediately, on demand of the churchwardens, he ſhall be committed by the ſaid juſtices to ſome workhouſe or houſe of correction for 18 months, there to be kept to hard labour. 6 *An. c.* 31. *ſ.* 3.

XII. Servant ſtealing his maſter's goods.

By the 21 H. 8. c. 7. *If any ſervant to whom any goods ſhall by his maſter or miſtreſs be delivered to be kept, ſhall go away therewith, to the intent to ſteal the ſame; or, being in his maſter or miſtreſs's ſervice, without his or her aſſent, ſhall imbezil or otherwiſe convert the ſame to his own uſe, with like purpoſe to ſteal it, if the ſame be of the value of* 40 s. *or above, he ſhall be guilty of felony; but this not to extend to any apprentice, or any perſon within the age of* 18 *years.*

By his maſter or miſtreſs] If the maſter's wife deliver goods of the maſter, to the ſervant to keep, and he goes away with them, it ſeems this is within the ſtatute, for he hath them by delivery of his miſtreſs; and the maſter's wife

wife is as well his miſtrefs, as if ſhe were ſole. 1 *H. H.* 668.

Be delivered to be kept] This ſtatute was introductive of a new law, when the goods were actually *delivered* to the ſervant that goes away with them; for where there is ſuch a delivery, it could not at the common law be a felony. 1 *H. H.* 667.

But yet a ſervant may be guilty of felony at common law, if he *take* the goods of his maſter felonioufly, nay, tho' they be goods under his charge, as a ſhepherd, butler, and the like; and for this he may be indicted at this day as a felon at common law: and of this felony at common law an apprentice, or ſervant under the age of 18 years, may be guilty, and indicted thereof at common law. 1 *H. H.* 667.

And therefore tho' this ſtatute exempt an apprentice or ſervant under 18, from the pain of felony enacted *de novo* by this ſtatute, namely, where goods are actually delivered to him, yet it leaves him in the ſame condition as to any felony at common law, as if he were not excepted; and therefore if a butler or ſhepherd, under the age of 18 years, or if an apprentice take away his maſter's goods felonioufly, without an actual delivery, tho' they are under the value of 40 *s.* he is indictable of felony at common law. 1 *H. H.* 667, 668.

If a man delivers to his ſervant the key of his chamber door, and the ſervant taketh away his maſter's goods in the chamber (above the value of 12 *d.*) this is not felony upon the ſtatute, but at the common law, for the *goods* were not delivered. *Dalt. c.* 155.

If a man appoints his ſervant to take and carry corn to market, and to take his horſe to carry the ſame upon, and the ſervant goeth away with the corn or horſe; this is felony in the ſervant, if the goods he ſo goeth away with, be all to the value of 40 s. *Dalt. c.* 155.

But if the ſervant waſtefully conſumeth the goods, and returneth again to his maſter, this is no felony. *Dalt. c.* 155.

If the maſter deliver an obligation to his ſervant, to receive the money thereby due, and the ſervant receive the money, and goeth away with the ſame, with intent to ſteal it; this is no offence within this ſtatute, becauſe he had not the money of the delivery of his maſter. 3 *Inſt.* 105.

So if the maſter deliver to his ſervant wares or merchandizes to ſell, and he ſelleth the ſame, and goeth away with

the money as before, this is no offence within this ſtatute for the cauſe aforeſaid. 3 *Inſt.* 105.

So if the ſervant receiveth above 40 *s.* of his maſter's rents, and run away therewith, it is no felony; for the ſtatute is, where the maſter delivereth it to keep. *Dalt. c.* 155.

But it is held, that if the maſter deliver to the ſervant 20 *l.* in ſilver, to change it into gold at the goldſmith's, or leather to make ſhoes, and he run away with the gold or ſhoes, it is felony. 1 *H. H.* 668.

Shall be guilty of felony] But not without benefit of clergy. But by the 12 *An. ſt.* 1. *c.* 7. Every perſon who ſhall ſteal goods to the value of 40 *s.* out of any dwelling houſe, altho' it be not broken open, ſhall be guilty of felony without benefit of clergy: But this not to extend to apprentices under 15 years of age.

And in *Joſhua Cornwall*'s caſe, *M.* 4 *G.* 2. it was adjudged, that a ſervant may be guilty of burglary with reſpect to his maſter's goods, although he did not break and enter, nor take, nor carry the goods away. Which was thus: The ſervant in the night opened the ſtreet door; and let in the thief, and ſhewed him the ſide board, from whence he took the plate; then the ſervant opened the door, and let him out, but did not go out with him, but went to bed. Upon the trial it was doubted, whether this was burglary in the ſervant, he not going out with the other; wherefore it was ordered to be found ſpecially. And afterwards at a meeting of all the judges at *Serjeants Inn*, they were all of opinion that it was burglary in both. And upon report of this opinion the next ſeſſions, the defendant was executed. *Str.* 881.

XIII. Diſputes between ſilk maſters and their workmen.

1. By the 13 & 14 *C.* 2. *c.* 15. Every ſilk winder and doubler, who ſhall unjuſtly, or deceitfully and falſly purloin, imbezil, pawn, ſell, or detain any part of ſilk delivered to them to wind or double, in every ſuch caſe, as well the winder or journeyman ſo offending, as the buyer and receiver thereof, being lawfully convicted, by confeſſion, or oath of one witneſs, before one juſtice (or mayor,) ſhall render to the party grieved ſuch ſatisfaction for his damage and loſs and charges, as the juſtice ſhall order. *ſ.* 6.

But

But no more damages shall be given, than the party grieved shall prove he is damnified, and hath expended; and if the party shall not be able, or do not make recompence in 14 days after conviction, he shall for the first offence be apprehended and whipped, or set in the stocks where the offence was committed, or in some market town near, in the said county; and for the second offence, to incur the like, or such further punishment by whipping or being put in the stocks, as such justice shall think convenient. *s.* 7.

2. And by the 20 *C.* 2. *c.* 6. If any silk winder or doubler shall be found faulty, in unjustly, deceitfully, or falsely purloining, imbezilling, pawning, selling, or detaining any silk committed to his trust; any justice, or mayor, shall immediately on conviction by confession, or oath of one witness, commit him to prison or to the house of correction, till satisfaction be given to the party wronged, or punishment inflicted as by the 13 & 14 *C.* 2. is appointed.

3. And by the 8 & 9 *W.* *c.* 36. Every person that shall imbezil, pawn, sell, or detain any silk delivered to him to be wrought, or after it is wrought up, and also the receiver and buyer thereof, or such as take the same to pawn, shall be subject to all the penalties of the 13 & 14 *C.* 2. *c.* 15. and the 20 *C.* 2. *c.* 6.

XIV. Disputes between clothiers and their workmen, by divers statutes.

1. By the 4 *Ed.* 4. *c.* 1. Clothmakers shall pay to the carders, and spinsters, and other labourers, their wages in money and not in goods, and deliver wool to them to be wrought according to the due weight thereof; on pain of forfeiting treble value of the wages, and for every delivery of excessive weight 6 d. *s.* 5.

And every carder, spinster, weaver, fuller, shearman, and dyer, shall duly perform his duty in his occupation, on pain of double damages to the party grieved. *s.* 6.

And every justice of the peace, mayor, master, warden, bailiff, portreve, constable of hundred, and steward of the leet, may hear and determine the same, and commit the offender to the next gaol, till the said duties, forfeitures, and damages be paid. And any person not grieved may inform; in which case, the offender shall forfeit to the king, or to such person as shall be intitled to fines or

amerciaments, 3 *s.* 4 *d.* And they may grant like proceſs, as juſtices of the peace may do for ſurety of the peace, without any fee to be taken for the execution of their offices in this behalf. *ſ.* 6.

2. By the 7 *J. c.* 7. Every ſorter, carder, kember, ſpinſter, and weaver, who ſhall unjuſtly, falſly, or deceitfully convey, imbezil, purloin, ſell, or detain any part of the wool or yarn delivered by any clothier, maker of bays, ſays, or by any other perſon making ſuch cloths or ſtuffs, and alſo the buyer and receiver thereof, knowing the ſame, being thereof convicted by confeſſion, or oath of one witneſs, before two juſtices, or before the mayor and one of the aldermen or moſt ſubſtantial perſons of a town corporate, ſhall make ſuch ſatisfaction for damages, as the ſaid juſtices or chief officers ſhall appoint; and if the offender ſhall not by them be thought ſufficient, or do not make ſuch ſatisfaction, he ſhall for the firſt offence be apprehended and whipped, or ſet in the ſtocks where the offence is committed, or in ſome market town near in the ſame county; and for the ſecond offence, ſhall incur the like or ſuch further puniſhment by whipping, or being put in the ſtocks, as the ſaid juſtices or chief officers ſhall think convenient. *ſ.* 2.

And every ſpinner that ſhall receive any wool to be ſpun into yarn, for any clothier dwelling in *Cogſhall*, *Bocking*, *Braintree*, *Halſteed*, *Wittam*, or *Colcheſter*, and ſhall deliver back the yarn by any reel ſhorter than two yards about, ſhall be ſubject to the like puniſhment. *ſ.* 4.

3. By the 10 *An. c.* 16. Every clothier, clothworker, cardmaker, or other perſon concerned in the trade of the woollen manufacture, ſhall pay his workmen in money, and not in goods; on pain of 20 *s.* on conviction in 30 days, before one juſtice, on oath of one witneſs, half to the informer, and half to the poor: If he ſhall not pay in 14 days after conviction, the ſame to be levied by the conſtable by warrant of ſuch juſtice, by diſtreſs; and where no ſufficient diſtreſs can be found, to be committed to the gaol or houſe of correction, to be kept to hard labour not exceeding 3 months. *ſ.* 6, 7, 8.

Perſons aggrieved on this act may appeal to the next ſeſſions, who may allow coſts. *ſ.* 9.

4. By the 1 *G. ſt.* 2. *c.* 15. Every clothier, clothworker, cardmaker, or other perſon concerned in the trade of the woollen manufacture, ſhall pay his workmen in money, and not in goods; on pain of 40 *s.* on conviction (in 40 days)

days) before one juſtice, on oath of one witneſs; to be diſpoſed, if in *London*, to the benefit of *Chriſt's hoſpital*, elſewhere to the poor where the offence ſhall be diſcovered; and if he ſhall not pay in 30 days, to be levied by the conſtable, by warrant of ſuch juſtice, by diſtreſs; and where no ſufficient diſtreſs can be found, to be committed to the common gaol or houſe of correction, to be kept to hard labour for 3 kalendar months. *ſ.* 7, 8, 12.

5. By the 12 *G. c.* 34. If any perſon ſhall, by day or night, break or enter by force into any houſe or ſhop, with intent to cut or deſtroy any ſerge or other woollen goods in the loom, or any tools employed in the making thereof, or ſhall wilfully and maliciouſly cut or deſtroy any ſuch ſerges or woollen goods in the loom, or on the rack, or ſhall burn, cut, or deſtroy any rack on which any ſuch ſerges or woollen goods are hanged in order to dry, or ſhall wilfully and maliciouſly break or deſtroy any tools uſed in the making ſuch goods; he ſhall be guilty of felony without benefit of clergy. *ſ.* 7.

6. By the 13 *G. c.* 23. Whereas diſputes have ariſen, between the clothiers and makers of woollen cloth, and the manufacturers employed by them, concerning the length of the warping bars, and uncertainty of weights, by which wool, yarn, and other materials uſed in the manufacturing of woollen goods have been delivered out to the workmen; for quieting the ſame it is enacted, that it ſhall not be lawful for any maker of mixed, medley, or white cloth, to uſe any bars called warping bars, but only ſuch which ſhall be of the meaſure and length hereafter appointed; that is to ſay, every long warping bar ſhall be in length three yards and three inches, and no more; and every round warping bar ſhall be four yards and four inches round, and no more; the ſaid three inches on the long bar, and the ſaid four inches on the round bar, being in lieu of the over meaſure uſually allowed in cloths; and alſo the thrums at the ends of the warping bars ſhall not exceed 18 inches in length; and if any maker of ſuch cloth ſhall uſe any warping bar of other length or meaſure, or with thrums exceeding 18 inches in length, he ſhall forfeit 10 l. *ſ.* 1.

Every maker of ſuch cloth, or goods mixed with wool, ſhall give out all wool, yarn, or other materials, by weight at 16 ounces to the pound; and ſhall receive back the ſame by the ſame weight, on pain of 5 l. *ſ.* 2.

Offences againſt this act ſhall be determined by two juſtices on information on oath, within 3 kalendar months; who ſhall levy the penalties by diſtreſs, half to the inform-

er, and half to the poor; for want of ſufficient diſtreſs, to be committed to gaol not exceeding 3 months, or until ſatisfaction be made. *ſ.* 4.

And all diſputes and demands, relating to work, wages, or damages, between any clothier or maker of woollen goods, or goods mixed with wool, and any weaver or other perſon employed in ſuch manufactures, ſhall be determined by two juſtices, who ſhall on complaint ſummon the parties, and hear and examine on oath, and adjudge ſuch ſatisfaction, and give ſuch coſts and damages to the party grieved, as they ſhall judge reaſonable, and iſſue their warrant to levy ſuch coſts and damages (if not paid in ten days) by diſtreſs, and for want of ſufficient diſtreſs, ſhall commit the party to the county gaol or houſe of correction, not exceeding 3 months, or till ſatisfaction be made. *ſ.* 5.

Perſons aggrieved by order of ſuch juſtices, may appeal to the next ſeſſions, giving 6 days notice; and the ſeſſions may award ſuch coſts and damages as they ſhall judge reaſonable, and levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, may commit the party to the county gaol or houſe of correction, not exceeding 3 kalendar months, or till ſatisfaction be made; and no proceedings herein ſhall be removed by certiorari or other proceſs. *ſ.* 6.

And one juſtice, on information on oath, that any perſon is, or is ſuſpected to be, guilty of any the ill practices aforeſaid, may iſſue his warrant to the conſtable or other peace officer, or to any churchwarden or overſeer, directing him in the day time to enter into any houſe, ſhop, warehouſe, or other ſuſpected place, to ſearch for and examine all ſuch bars and weights as ſhall be made uſe of for the purpoſes before mentioned, by any ſuch clothier or maker of woollen goods; and if ſuch perſon ſhall interrupt the officer, he ſhall forfeit 5 l. *ſ.* 7.

And every maker of mixed, medley, or white broad cloth, ſhall pay the weaver according to the number of yards, that the chains are laid on the warping bars, and not otherwiſe, on pain of 5 l. *ſ.* 9.

7. By the 29 *G.* 2. *c.* 33. If any clothier, ſerge-maker, woollen or worſted ſtuff-maker, worſted or woollen yarn ſtocking-maker, or perſon concerned in making any woollen cloths, ſerges, ſtuffs, worſted or woollen yarn ſtockings, or any other perſon any way concerned for himſelf or another, in employing weavers, combers of jerſey, or wool worſted combers, ſpinners, knitters, or other labourers,

in

in the woollen manufactures, shall pay any person his wages in goods, or by way of truck, bill, or note, or in any other manner than in money; he shall (on prosecution in three months) forfeit 20*l.* to be recovered by action of debt, by any person who shall sue for the same. ——— Or otherwise, before two justices, by confession, or oath of one witness, by distress (if not paid in 14 days); and to be distributed, half to the informer, and half to the poor: And for want of sufficient distress, to be committed to the house of correction for any time not exceeding 3 months, or until satisfaction shall be made. Persons aggrieved by the order of the justices may appeal to the next sessions, first entring into recognizance with sufficient security before the justices to prosecute and abide by the order that shall be made on such appeal, and giving 8 days notice in writing to the party in whose favour the order was made. And the sessions may award costs and damages, and by their order or warrant may levy such costs and damages by distress; and for want of sufficient distress, may commit the party to the common gaol, for any time not exceeding 3 months, or until satisfaction shall be made. And the order of sessions shall be final: And no proceedings of the justices out of, or in the sessions, shall be removed by certiorari, or otherwise.

8. And by the 30 *G.* 2. *c.* 12. If any clothier or maker of any mixed, medley, or white broad cloth, shall refuse or neglect to pay to the weaver employed by him his wages or price agreed on in money, within two days next after the work shall be performed and delivered to such employer or some person on his behalf (the same being demanded of such employer or person employed on his behalf); every such clothier or person so offending shall forfeit 40*s.* to be recovered and disposed of as by the said act of the 29 *G.* 2. *c.* 33.

XV. Disputes between masters and servants in the woollen, linen, fustian, cotton, and iron manufactures; by the 1 An. st. 2. c. 28. & 13 G. 2. c. 8.

1. By the 1 *An. st.* 2. *c.* 28. If any person employed in the woollen, linen, fustian, cotton, or iron manufactures shall imbezil or purloin any wefts, thrums, or ends of yarn, or any other materials of wool, hemp, flax, cotton, or iron,

iron, or shall reel short or false yarn, and shall be convicted by oath of one witness, or confession, before one justice, he shall forfeit double the value of the damages: And if he shall neglect or refuse to pay the same, the justice shall commit him to the house of correction until satisfaction shall be made: And if it shall appear to the justice, that he is not able to make satisfaction, he shall be there publickly whipped, and kept to hard labour not exceeding 14 days. *s.* 1.

And every person buying or receiving any wefts, thrums, or ends of yarn, or other materials of wool, hemp, flax, cotton, or iron, shall suffer in like manner. *s.* 2.

And all payments to the said workmen, shall be in money, and not in cloth, victuals, or commodities; and all wool delivered out to be wrought up, shall be delivered with declaration of the true weight thereof; on pain that every offender in either of the said cases, shall forfeit double the value of what shall be due for such work; and if any such workman shall be guilty of any such fraud or default, in the work by him done, he shall answer double damages. *s.* 3.

And all wages, demands, frauds, and defaults of labourers, in the said manufactures, concerning work done, shall be determined by two justices, who may summon and examine witnesses on oath: Persons aggrieved may appeal to the sessions to be holden next after notice of the order of the said two justices; and if the sessions give judgment against the appellant, they shall order him to pay such costs as to them shall seem meet. *s.* 4.

2. And by the 13 *G.* 2. *c.* 8. If any person employed in the working up of any woollen, linen, fustian, cotton, or iron manufactures, shall purloin, imbezil, secrete, sell, pawn, exchange, or otherwise illegally dispose of any of the materials, whether the same or any part thereof be or be not first wrought up, or shall reel short or false yarn, and shall be convicted thereof as by the 1 *An. st.* 2. *c.* 18. he shall forfeit double value of the damages, together with such costs as the justice shall judge reasonable; and if not paid immediately, the said justice shall cause him to be committed to the house of correction, to be whipped and kept to hard labour, not exceeding 14 days; and for a second, or other subsequent offence, for such imbezilling or purloining, he shall forfeit four times the value of the damages, together with such costs as the justice shall judge reasonable; and if not paid immediately, then such or any other justice shall cause him to be committed to the house of correction, to be

be kept to hard labour for any time not exceeding three months, nor leſs than one month, and alſo during the time of ſuch commitment, ſhall cauſe him to be publickly whipped in the market town where he ſhall be committed, at the market place or croſs, once or oftner, as to ſuch juſtice ſhall ſeem reaſonable. *ſ.* 1.

And the receivers of the ſame ſhall be ſubject to the like penalties. *ſ.* 2.

And the forfeitures by both theſe acts ſhall be half to the party injured, and half to the poor; with the like liberty of appealing on this act, as on the 1 *An.* id. ſ. 3.

XVI. Diſputes between maſters and their workmen, in the leathern manufactures; by the 13 G. 2. c. 8.

If any perſon employed in cutting, paring, waſhing, dreſſing, ſewing, making up, or otherwiſe manufacturing of gloves, breeches, leather, ſkins, boots, ſhoes, ſlippers, wares, or other goods or materials to be made uſe of in any the ſaid employments, or in any branch or particular thereof, ſhall fraudulently purloin, imbezil, ſecrete, ſell, pawn, or exchange all or any part of the gloves, breeches, leather, ſkins, parings, or ſhreds of gloves, or leather, boots, ſhoes, ſlippers, or other the ſaid wares, either before or after they ſhall be made into wares, and be thereof convicted by the oath of the maſter or owner, or other credible witneſs, or confeſſion, before one juſtice where the offence ſhall be committed or the offender ſhall reſide; ſuch juſtice may award him to make ſatisfaction to the party injured, not exceeding double value of the goods ſo purloined or diſpoſed of, half to the party grieved, and half to the poor, together with full charges attending the conviction; to be levied by diſtreſs and ſale; and if he ſhall not have goods ſufficient, and ſhall not pay immediately, ſuch juſtice ſhall commit him to the houſe of correction or other publick priſon, to be kept to hard labour for 14 days, and whipped in ſuch manner as the juſtice ſhall direct; and for a ſecond, or other ſubſequent offence, he ſhall forfeit four times the value of the damages, together with ſuch coſts as the juſtice ſhall judge reaſonable; and if not paid immediately, to be committed to the houſe of correction or other publick priſon, to be there kept to hard labour not exceeding three months, nor leſs than one month, and alſo during ſuch commitment to be publickly whipped in the market town where

where he ſhall be committed, at the market place or croſs, once or oftner, as to ſuch juſtice ſhall ſeem reaſonable. *ſ.* 4.

And every perſon who ſhall knowingly or willingly receive any the ſaid goods or materials, either from the perſon offending, or from any other perſon (except the owner) or offer ſo to do; he ſhall, on like conviction, make ſuch recompence in two days, or elſe be ſubject to ſuch diſtreſs, and for want of ſufficient diſtreſs be liable to the like puniſhment, as the perſons ſo purloining or otherwiſe diſpoſing thereof as above; and ſo in like manner for the ſecond and every ſubſequent offence. *ſ.* 5.

And all payments to workmen employed in the ſaid manufactures, ſhall be in money, and not in goods, except by their own requeſt and conſent; and all materials delivered out to be wrought in ſuch manufactures ſhall be delivered with a declaration of the true weight, quantity, or tale thereof; on pain of forfeiting to ſuch manufacturer double value of what ſhall be due for his work; and if ſuch labourer or manufacturer ſhall be guilty of any fraud, abuſe, neglect, or default in the work by him undertaken to be done, he ſhall anſwer to the owner double damages. *ſ.* 6.

And all wages, demands, frauds, abuſes, neglects, and defaults of labourers and manufacturers in the ſaid trades, concerning any work done in ſuch manufacture, ſhall be determined by two juſtices, who may ſummon and examine witneſſes upon oath. *ſ.* 7.

Moreover, every perſon retained or employed in making up any the ſaid manufactures, for any one maſter, and neglecting the performance thereof, either by procuring or permitting himſelf to be ſubſequently employed by any other maſter, before he hath compleated the work, ſhall on conviction by oath of one witneſs before one juſtice, be ſent to the houſe of correction, to be kept to hard labour not exceeding one month. *ſ.* 8.

Perſons aggrieved by any order of the ſaid two juſtices, may appeal to the next ſeſſions, giving eight days notice; and the ſeſſions may award coſts to either party. But no order of ſuch two juſtices ſhall be appealed againſt, or quaſhed, for want of form only. *ſ.* 9.

XVII. Disputes between masters and their workmen, in the making of hats, or in the woollen, linen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, or silken manufactures; by the 22 G. 2. c. 27.

If any person hired or employed to make up any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wool, furr, hemp, flax, cotton, mohair, or silk, or of any the said materials mixed one with another, shall purloin, imbezil, or otherwise unlawfully dispose of any of the materials with which he shall be intrusted, whether the same be or be not first wrought up, or shall reel short or false yarn, and be convicted thereof by the oath of the owner, or other credible witness, or confession, before one justice where the offence shall be committed, or the party shall reside, he shall be committed to the house of correction, or other publick prison, to be kept to hard labour for 14 days, and to be once publickly whipped, at the market place, or other publick place where he shall be committed; and for a second or other subsequent offence, he shall be committed in like manner, for any time not exceeding three months, nor less than one month, to be kept to hard labour, and also to be publickly whipped twice or oftner. *s.* 1.

And if any person shall be convicted as aforesaid, of buying, receiving, or taking by way of gift, pledge, sale, or exchange, or in any other manner, from any person whom he knows to be employed to make or prepare any the said manufactures, any thrums or ends of yarns, or any other materials of wool, furr, hemp, flax, cotton, iron, or any leather, mohair, or silk, whether the same be or be not first wrought up, the consent of the employer not being first had; or of buying or receiving in any manner whatsoever, from any other person, any of the said materials, whether the same be or be not first wrought up, knowing them to be purloined or imbezilled, he shall, for the first offence, forfeit 20*l.* and if not paid immediately, the justice shall commit him to the house of correction or other publick prison, to be kept to hard labour for 14 days, unless the forfeiture be sooner paid; and if it be not paid in 2 days before the expiration of the term, he shall be publickly whipped at the market place, or other publick place of the town, once

or

or oftner, as the juſtices ſhall order; and for a ſecond, or other ſubſequent offence, he ſhall forfeit 40 *l.* and if not paid immediately, he ſhall be committed in like manner, to be kept to hard labour not exceeding three months, nor leſs than one month, unleſs the forfeiture be ſooner paid; and if it be not paid in ſeven days before expiration of the term, he ſhall be publickly whipped twice or oftner, as the juſtice ſhall order: And the ſaid forfeitures, after ſatisfaction made thereout to the party injured, with ſuch coſts as ſhall be adjudged by the juſtice, ſhall be equally diſtributed among the poor of the pariſh where the offender ſhall reſide. *ſ.* 2.

(Which conviction ſhall be in the form and words following:

Middleſex, to wit. BE *it remembred, that on the* —— *day of* —— *in the* —— *year of his majeſty's reign*, A. B. *was convicted before me* [or *us*] —— *of his majeſty's juſtices of the peace for the ſaid county of* —— [or, *for the riding or diviſion of the ſaid county of* —— or, *for the city, liberty, or town of* —— *in the ſaid county of* —— as the caſe ſhall be] *of buying, receiving, or taking to pawn* (as the caſe ſhall be) —— (ſpecifying the materials or wares ſo bought, received, or taken to pawn) *the property of* C. D. *of* —— *in the county of* —— *and by him* (or *her*) *delivered to* —— *to be manufactured. Given under my hand and ſeal,* [or, *our hands and ſeals*] *the day and year aforeſaid.*

Which ſhall not be removed by certiorari: And the juſtices ſhall cauſe the ſame to be written on parchment and tranſmitted to the next ſeſſions, to be filed amongſt the records. 23 *G.* 2. *c.* 13. *ſ.* 9.)

Perſons convicted of buying or receiving any the ſaid materials, may appeal to the next ſeſſions; in which caſe the execution of the judgment ſhall be ſuſpended, the perſon entring into a recognizance before the juſtice, at the time of the conviction, with two ſureties, in double the ſum adjudged, to proſecute the appeal, and to be forthcoming to abide the determination of the juſtices in the ſaid ſeſſions; and the ſeſſions may award coſts to either party; and if the judgment be affirmed, the appellant ſhall immediately pay the ſum adjudged, with coſts; or in default thereof, ſhall ſuffer the penalties before directed. *ſ.* 3.

And if any perſon ſhall be convicted of purloining or imbezilling any the ſaid materials, or of buying or receiv-

ing the ſame in manner before deſcribed, the juſtice before whom the conviction ſhall be, may iſſue his warrant to any perſon, impowering him in the preſence of a conſtable, to enter into and ſearch in the day time, the houſes and other places belonging to ſuch perſon, and to bring ſuch materials as ſhall be found before the ſaid juſtice, to be kept in cuſtody by him; and if in 24 days it ſhall be made appear to the juſtice, that the perſon from whoſe houſe the ſaid materials ſhall be ſo taken, is the lawful owner, they ſhall be reſtored to him; otherwiſe they ſhall be deemed to be purloined or imbezilled, and ſhall be publickly ſold, and the money ariſing thereby (charges of ſale being firſt deducted) ſhall be equally diſtributed amongſt the poor of the pariſh where the perſon convicted ſhall reſide. *ſ.* 4.

And the ſaid juſtice ſhall, within three days after ſuch materials ſhall be brought to him, give notice thereof in writing under his hand and ſeal, to the perſon convicted, appointing a time and place for his attending to prove his property therein; which ſhall be within 21 days, and not leſs than 18 days after ſuch notice; and if ſuch perſon be in any houſe of correction or other priſon, the juſtice ſhall cauſe a copy of the ſaid notice, atteſted under his hand and ſeal, to be delivered to the keeper; who ſhall bring the ſaid perſon at the time and place ſpecified, on pain of forfeiting to the priſoner the full value of the ſaid materials, by diſtreſs and ſale, by warrant of the ſaid juſtice, if not paid immediately. *ſ.* 5.

If any perſon ſhall be aggrieved by the judgment of the juſtice, relating to the ſale of the materials, he may appeal to the next ſeſſions, and in the mean time the ſale ſhall be poſtponed; a written notice under the hand of the appellant, ſignifying his intention to appeal, being given to the juſtice, before the time appointed for the ſale; and if the appellant ſhall not proſecute the appeal, or the judgment ſhall be affirmed, the ſeſſions may award coſts to the defendant. *ſ.* 6.

And if any perſon ſhall not make uſe of the whole of the materials, and ſhall not return the remainder in 21 days (if required by the owner) this ſhall be deemed imbezilling and purloining. *ſ.* 7.

And upon complaint on oath of any offence againſt this act to any one juſtice, he ſhall iſſue his warrant for bringing the offender before him, or any other juſtice, who ſhall hear and determine the ſame. *ſ.* 8.

And if any perſon ſhall be employed to work up any of the ſaid manufactures for any one maſter, and ſhall neglect

or

or refuſe the performance thereof, by permitting himſelf to be ſubſequently retained by any other perſon, before he ſhall have compleated the ſame; he ſhall, on conviction on the oath of one witneſs, before one juſtice, be ſent to the houſe of correction, to be kept to hard labour not exceeding one month. *ſ.* 9.

But this ſtatute ſhall not repeal the 13 & 14 *C.* 2. nor the 20 *C.* 2. nor the 3 & 9 *W.* beforementioned. *ſ.* 10.

Moreover, all contracts or agreements, and all by-laws, rules and orders made in any unlawful clubs and ſocieties, by any perſons employed in any woollen manufacture, or in the making of felts or hats, or in any manufacture of ſilk, mohair, furr, hemp, flax, linen, cotton, fuſtian, iron, or leather, or in any manufactures made up of wool, furr, hemp, flax, cotton, mohair, or ſilk, or any of the ſaid materials mixed one with another, for regulating any of the ſaid trades, or for ſettling the prices of goods, or for advancing their wages, or for leſſening their uſual hours of work, ſhall be void: And if any ſuch perſon ſhall be concerned in any ſuch combination, he ſhall on conviction in three kalendar months, on the oath of one witneſs before two juſtices be committed to the houſe of correction, to be kept to hard labour, not exceeding three months, or to the common gaol not exceeding three months. *ſ.* 12.

And if any ſuch perſon ſhall depart from his ſervice before the end of the term, or ſhall quit or return his work before it be finiſhed, unleſs for ſome reaſonable cauſe to be allowed by two juſtices; he ſhall on the like conviction before two juſtices, be committed to the houſe of correction, to be kept to hard labour not exceeding three months. *id.*

And if any ſuch perſon ſhall wilfully damnify, ſpoil, or deſtroy, without conſent of the owner, any work committed to his charge, he ſhall, on conviction as aforeſaid, forfeit to the owner double value, by diſtreſs, by warrant of two juſtices; and for want of ſufficient diſtreſs, to be committed to the houſe of correction, to be kept to hard labour, for any time not exceeding three months, or till ſatisfaction be made. *id.*

And every ſuch maſter ſhall pay his workmen in money, and not otherwiſe, and ſhall not make any deduction on account of any goods ſold or delivered previous to the agreement: And for the more eaſy recovering the ſaid wages, two juſtices upon complaint (in three months, 13 *G.* *c.* 23.) ſhall ſummon the party offending, and for non-payment ſhall iſſue their warrant to levy the ſame by diſtreſs; and for want

want of sufficient distress, shall commit the offender to gaol for six months, or until he shall pay, or give full satisfaction for the same, to the good liking of the party grieved. *id.*

And every person paying the same otherwise than in money, shall forfeit 10 *l.* half to the informer, and half to the party grieved, by distress as aforesaid. *id.*

Persons aggrieved by order of the two justices may appeal to the next sessions, giving reasonable notice; the reasonableness of which notice shall be determined by the justices at the said sessions; and if reasonable time of notice was not given, they shall adjourn the appeal to the next sessions after; and the sessions may award costs to either party. *id.*

Moreover, if any person shall assault or abuse any master or other person concerned in any of the said manufactures, whereby he shall receive any bodily hurt, for not complying with any such illegal by-laws, rules, or orders; or shall write or cause to be written, or knowingly send or cause to be sent any letter, writing, or message, threatening any harm to any such person, or threatning to burn, pull down, or destroy any of his houses, or cut down any of his trees, or to maim or kill any of his cattle, for not complying with any demands of his workmen, or for not conforming to any such illegal by-laws, rules, or orders; he shall, on conviction by indictment, in 12 kalendar months, be guilty of felony, and transported for seven years. *id.*

XVIII. Disputes between masters and their workmen in the manufacture of clocks and watches; by the 27 G. 2. c. 7.

If any person employed by any one practising the trade of clockmaking, or watchmaking, or any part or branch thereof, to make, finish, alter, repair, or clean any clock, watch, or part thereof; or intrusted by any person practising the said trade or trades, with any gold, silver, or other metal or material, to be, or that shall be, in the whole or in part, wrought or manufactured for any part of a clock or watch, or any diamond, or other precious stone, to be, or that shall be, set or fixed in or about any clock or watch, shall purloin, imbezil, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any clock, watch, gold, silver, or other metal or material, or any part thereof, or any diamond or other precious stone, with which he shall

be ſo intruſted; and ſhall be thereof convicted by the oath of the owner, or other credible witneſs, or confeſſion, before one juſtice, where the offence ſhall be committed, or the perſon ſo charged ſhall reſide, he ſhall for the firſt offence forfeit 20 *l.* and if not forthwith paid, the juſtice ſhall commit him to the houſe of correction or other publick priſon, there to be kept to hard labour for the ſpace of 14 days, unleſs the forfeiture ſhall be ſooner paid; and if within two days before the expiration of the ſaid 14 days ſuch forfeiture ſhall not be paid, the juſtice may order him to be publickly whipped at the market place, or ſome other publick place of the city, town, or place, where he ſhall be committed; and for a ſecond, or other ſubſequent offence, he ſhall forfeit 40 *l.* in like manner, and if not paid forthwith, the juſtice ſhall commit him as aforeſaid, to be kept to hard labour for any time not exceeding three months, nor leſs than one month, unleſs the forfeiture ſhall be ſooner paid; and if within ſeven days before the expiration of the time for which he ſhall be committed, the forfeiture ſhall not be paid, the juſtice may order him to be whipped in like manner, twice or oftner, as to ſuch juſtice ſhall appear reaſonable.

And if any perſon ſhall buy, receive, accept, or take by way of gift, pawn, pledge, ſale, or exchange, or in any other manner, of or from any perſon whomſoever, any clock or watch, or part thereof, or any gold, ſilver, or other metal or material as aforeſaid, whether the ſame, or any part thereof, be or be not wrought or manufactured, or any ſuch diamond or other precious ſtone, knowing the ſame to be ſo purloined or imbezilled; he ſhall, on the like conviction, for the firſt offence forfeit 20 *l.* and if not forthwith paid, the juſtice ſhall commit him in like manner, to be kept to hard labour for 14 days, unleſs the forfeiture ſhall be ſooner paid, and if within two days before the expiration of the ſaid 14 days, the ſaid forfeiture ſhall not be paid, the juſtice ſhall order him to be publickly whipped as aforeſaid, once or oftener, as to ſuch juſtice ſhall appear reaſonable; and for a ſecond or other ſubſequent offence, he ſhall forfeit 40 *l.* and if not forthwith paid, the juſtice ſhall commit him as aforeſaid, to be kept to hard labour, for any time not exceeding three months, nor leſs than one month, unleſs the forfeiture ſhall be ſooner paid; and if within ſeven days before the expiration of the time for which he ſhall be committed, the forfeiture ſhall not be paid, the juſtice ſhall order him to be publickly whipped as aforeſaid, twice or oftener, as to him ſhall appear reaſonable.

And

And one juſtice on complaint to him made upon oath, of any offence againſt this act, may iſſue his warrant for apprehending and bringing before him, or before any other juſtice of the ſame place, the perſon ſo charged.

And the conviction ſhall be in this form,

Middleſex, to wit, BE *it remembred that on the* —— *day of* —— *in the* —— *year of his majeſty's reign*, A. B. *was convicted before me* (or *us*) —— *of his majeſty's juſtices of the peace for the ſaid county of* —— *or for the* —— *riding* (or *diviſion*) *of the ſaid county of* —— *or for the city, liberty, or town of* —— *in the ſaid county of* —— (as the caſe ſhall be) *of purloining, imbezilling, ſecreting, ſelling, pawning, exchanging, or unlawfully diſpoſing of, or of buying, receiving, or taking to pawn* (as the caſe ſhall happen to be) —— (ſpecifying the reſpective goods, materials or effects) *the property of* C. D. *of* —— *in the county of* ——. *Given under my hand and ſeal* (or *our hands and ſeals*) *the day and year aforeſaid.*

If any perſon ſhall think himſelf aggrieved by the judgment of the juſtice, he may appeal to the next ſeſſions; in which caſe the execution of the judgment ſhall be ſuſpended, the perſon ſo convicted entering into a recognizance at the time of the conviction, with two ſureties, in double the ſum adjudged, to proſecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the juſtices in ſuch ſeſſions; and the juſtices there ſhall hear and determine the ſame, and award ſuch coſts to either party, as to them ſhall appear juſt and reaſonable; and if the judgment ſhall be affirmed, the appellant ſhall immediately pay the ſum adjudged, together with ſuch coſts as ſhall by the court be awarded; or in default thereof, ſhall ſuffer the penalties as for purloining, imbezilling, or receiving as aforeſaid.

The ſaid forfeitures, after ſatisfaction made thereout to the party injured, together with ſuch coſts of proſecution as the juſtice ſhall judge reaſonable, ſhall go to the uſe of the poor where the offender ſhall reſide.

And the juſtice ſhall cauſe the conviction to be fairly written upon parchment, and tranſmitted to the next ſeſſions, there to be filed and kept amongſt the records.

And the ſame ſhall not be removed by certiorari.

XIX. Disputes between masters and servants in husbandry, artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, porters, and other labourers; by the 20 G. 2. c. 19.

By construction of law upon the statute of the 5 *El.* the justices had a power of compelling the payment of the wages which they had rated and assessed; but the said statute being deficient in two material points, to wit, in extending only to such wages as should be rated, and to servants in husbandry only; and moreover, there being therein (as hath been observed) no power to admit the servant's oath as evidence; therefore by the 20 *G.* 2. *c.* 19. it is enacted as follows:

All complaints, differences, and disputes between masters or mistresses and servants in husbandry hired for a year [or for a less time, 31 *G.* 2. *c.* 11.]; or between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers employed for any certain time or in any other manner; shall be determined (A) by one justice, where the master or mistress shall inhabit, altho' no rate or assessment of wages has been made that year; which justice shall (B) examine on oath any such servant or other the said persons, or any other witnesses touching such complaint, and make such order (C) for payment of wages, as to him shall seem just and reasonable, provided that the sum in question do not exceed 10 *l.* with regard to any servant, nor 5 *l.* with regard to any other persons before mentioned; and in case of non-payment for 21 days, such justice may issue his warrant to levy the same by distress (D). *s.* 1.

And by the said statute, such justice on application or complaint on oath by any master, mistress, or employer (E), against any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer, concerning any misdemeanor, miscarriage, or ill behaviour in such his service or employment, may hear and determine the same (F), and punish the offender by commitment (G) to the house of correction, there to remain and be corrected, and held to hard labour not exceeding one kalendar month, or otherwise by abating some part of his wages (H), or by discharging (I) such servant or other the said persons from their service or employment. *s.* 1.

And in like manner, such justice, on complaint or application on oath by any such servant (K), artificer, handicraftsman,

craftſman, miner, collier, keelman, pitman, glaſſman, potter, or other labourer, againſt ſuch maſter, miſtreſs, or employer, concerning any miſuſage, refuſal of neceſſary proviſion, cruelty or other ill treatment, may ſummon (L) ſuch maſter, miſtreſs, or employer, to appear before him at a reaſonable time to be prefixed in ſuch ſummons; and he ſhall examine into the matter of ſuch complaint, whether ſuch maſter, miſtreſs, or employer, ſhall appear or not, proof being made upon oath of their being duly ſummoned; and upon proof thereof made upon oath, to his ſatisfaction, may diſcharge (M) ſuch ſervant, or other perſon aforeſaid, from his ſervice and employment, which diſcharge ſhall be given under his hand and ſeal *gratis*. ſ. 2.

If any perſon ſhall think himſelf aggrieved by ſuch determination, order or warrant of ſuch juſtice (except any order of commitment) he may appeal to the next ſeſſions, who may award coſts to either party, not exceeding 40 *s.* to be levied by diſtreſs, in manner before mentioned. *ſ.* 5.

And no certiorari ſhall iſſue to remove any proceedings hereupon. *ſ.* 6.

Note; The words in the aforegoing ſtatute [*and other labourers, employed for any certain time, or in any other manner*] are very general and comprehenſive, but yet perhaps ought not to be underſtood without ſome limitation; eſpecially it ſeemeth not neceſſary to extend them to any of the workmen in the woollen, linen, cotton, iron, leather, furr, hempen, or other manufactures herein before ſpecified, becauſe the law hath provided other methods of proceeding therein, and particularly becauſe the ſtatute of the 22 *G.* 2. which is ſubſequent to this ſtatute, takes no notice of this ſtatute, but makes divers regulations in the aforeſaid inſtances, which if this ſtatute had been ſuppoſed to extend unto them, would have been ſuperfluous and impertinent. And with leſs reaſon may the word *labourers* ſeem to extend to footmen, coachmen, carriers, and ſuch like; but from the company with which it is ranked, to wit, miners, colliers, keelmen, and the like, it ſeems moſt properly to ſignify ſuch perſons, not being brought up to or employed in trades, as procure their ſuſtenance by bodily labour.

XX. Shipmaſters and their ſeamen.

By the 2 *G.* 2. *c.* 36. It ſhall not be lawful for any maſter of a ſhip bound to parts beyond ſea, to carry any ſeaman or mariner, except his apprentices, to ſea, with-

out firſt agreeing with them for their wages, which agreement ſhall be made in writing, declaring what wages each ſeaman is to have reſpectively, during the whole voyage, or for the time he ſhall ſhip himſelf for; and alſo to expreſs the voyage for which the mariner was ſhipt, to perform the ſame, and to be ſigned by both parties; on pain that the maſter ſhall forfeit 5 *l.* for every ſuch ſeaman to *Greenwich* hoſpital, to be recovered on oath of one witneſs, before one juſtice, who ſhall iſſue his warrant to bring ſuch maſter before him; to be levied by diſtreſs; and if no diſtreſs can be found, to be committed to gaol till he ſhall pay the ſame.

Such mariner ſhall alſo ſign the agreement, in 3 days after he is entred on board.

And if any mariner ſhall deſert, or refuſe to proceed on the voyage, or ſhall deſert beyond the ſeas, after he ſhall have ſigned ſuch agreement, he ſhall forfeit to the owner of the ſhip the wages due to him.

And if any mariner ſhall deſert or abſent himſelf, after he hath ſigned ſuch contract; on application of the maſter, or owner of the ſhip, to one juſtice, he ſhall iſſue his warrant to apprehend ſuch mariner: And if he ſhall refuſe to proceed on the voyage, and ſhall not give a ſufficient reaſon for ſuch refuſal, then to be committed to the houſe of correction, to be kept to hard labour, not exceeding 30 days, nor leſs than 14 days.

And if any mariner ſhall abſent himſelf from the ſhip, without leave of the maſter, or other officer having charge of ſuch ſhip, he ſhall for every day's abſence forfeit two days pay to *Greenwich* hoſpital.

And if any mariner, not entring into the king's ſervice, ſhall leave the ſhip before he ſhall have a diſcharge in writing by the maſter, he ſhall forfeit one month's pay, to be recovered and diſpoſed of as hereafter is mentioned.

And the maſters ſhall pay the mariners their wages, if demanded, in 30 days after the ſhip's being entred at the cuſtom houſe (unleſs there is a covenant to the contrary), or at the time they ſhall be diſcharged, which ſhall firſt happen, deducting the penalties of this act: on pain of paying to each mariner that ſhall be unpaid, 20 *s.* above his wages to be recovered as the wages.

But no mariner by entring into, or ſigning ſuch agreement, ſhall be deprived of any means for recovery of wages, which he may now uſe: And the maſter ſhall be obliged to produce the contract, and not the mariner.

And

And the master shall deduct out of the wages all the penalties of this act, and enter the same in a book, and make oath, if required, to the truth thereof; which book shall be signed by the master, and two principal officers of the ship: which forfeitures (except forfeiture of wages to the owner on desertion, or refusing to proceed on the voyage) shall be applied to *Greenwich* hospital, to be paid to the officer in any port who collects the 6 *d.* a month deducted out of seamens wages, for the use of the hospital; which officer shall have power to administer an oath to such master, touching the truth of such penalties.

The master deducting the said penalties, and not paying them over in three months, shall forfeit treble to the said hospital; to be recovered as any penalties, for not duly paying the 6 *d.* a month.

Nevertheless, this act shall not debar any seaman from entring into the king's service, nor shall he forfeit his wages in that case, nor shall such entry be deemed a desertion.

Note, the said act at first was but temporary, and continued from time to time; but by the 2 *G.* 3. *c.* 31. it is made perpetual, and extended to his majesty's colonies in *America*; the penalties there, to *Greenwich* hospital, to be paid to such person as the commissioners of the admiralty shall direct: master deducting, and not paying the same in 3 months, shall forfeit treble, to the said hospital.

XXI. Taylors and their workmen within the bills.

By the 7 *G. st.* 1. *c.* 13. All contracts by or between journeymen taylors within the bills, for advancing their wages, or lessening their hours of work, shall be void; and persons entring into such agreement, shall on conviction in 3 months, on oath of one witness, before two justices, be committed to the gaol or house of correction for any time not exceeding two months.

And the sessions from time to time, upon application to them made, shall appoint the wages and hours of work; which all taylors and their workmen shall observe, on pain of imprisonment by such justices for any time not exceeding two months, on prosecution in six days.

And if any journeyman taylor shall depart from his service before the end of his term, or before his work be finished, or shall refuse to enter into work, unless for cause

to be allowed by two juſtices, he ſhall be ſent to the houſe of correction not exceeding two months.

Taylors allowing greater wages than ſo limited, ſhall forfeit 5 *l.* on conviction in three months, half to the informer, and half to the poor; and journeymen taking greater wages, ſhall be ſent to the houſe of correction not exceeding two months.

Perſons aggrieved by any order of two juſtices, may appeal to the next ſeſſions, giving ſix days notice; and the ſeſſions may award coſts to either party.

XXII. Shoemakers and their workmen within the bills.

By the 9 *G. c.* 27. If any journeyman ſhoemaker within the bills of mortality, ſhall be accuſed by his maſter of purloining any ſhoes or other wares or materials, one juſtice where the offence ſhall be committed, or the offender ſhall inhabit, on oath of ſuch offence, may ſummon the party, or iſſue his warrant to apprehend him; and if the ſame is proved before him by confeſſion, or oath of one witneſs, he ſhall award ſatisfaction for damages and charges, and levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, ſhall cauſe the offender to be whipped where the offence was committed; and for a ſecond or other offence, he ſhall commit him to the houſe of correction, not exceeding one month, nor leſs than 14 days.

And every perſon who ſhall buy, receive, or take in pawn the ſame, ſhall be ſubject to the ſame puniſhment.

And two juſtices on complaint on oath, may iſſue their warrant for ſearching in the day time for goods ſo purloined, and break open doors, and every perſon hindring ſuch ſearch ſhall forfeit 10 *l.* to him who ſhall ſue in two months; and if ſuch goods ſhall be found, they ſhall reſtore them to the owner, and cauſe the offender to make ſatisfaction for the damages and charges, as aforeſaid.

And every perſon retained by one maſter, who ſhall ſuffer himſelf to be retained by any other, before he hath finiſhed his work, ſhall, on conviction on oath of one witneſs, before one juſtice, be ſent to the houſe of correction not exceeding one month.

Perſons aggrieved, may appeal to the next ſeſſions, giving 8 days notice.

XXIII.

XXIII. *How far the master is answerable for the servant.*

1. The master is indictable for a nusance done by his servant; as for throwing dirt in the highways. L. *Raym.* 264.

But nevertheless it seemeth, that the servant also is indictable; for Mr. *Hawkins* says, that a servant is not excused the commission of any crime, by the command or coertion of his master. 1 *Haw.* 3.

2. If goods are delivered to the servant of a carrier, and the goods are lost, an action lies against the master. *Wood b.* 1. *c.* 6.

3. A servant with a cart, ran against another cart, wherein was a pipe of sack, and overturned the cart and spoiled the sack; an action lies against the master. 2 *Salk.* 441.

4. *M.* 10 *W. Jones* and *Hart.* A pawnbroker's servant took a pawn; the pawner came and tendred the money to the servant; he said he had lost the goods; upon this the pawner brought an action against the master; and it was held well. 2 *Salk.* 441.

5. *H.* 8 *G. Mead* and *Hammond.* The plaintiff, according to the common course of dealing, delivered to the defendant's servant an ingot of gold to assay; and it not being returned, he brought an action against the master. And *Pratt* Ch. J. directed the jury, that the delivery to the servant was sufficient to maintain the action against the master, on proving a subsequent demand and refusal; so the plaintiff had a verdict. *Str.* 505.

6. *M.* 8 *G. Carey* and *Webster.* The defendant was a clerk of the *South-sea* company, and took in payments. The plaintiff paid him 600 *l.* and he paid it over to the company. And by *Pratt* Ch. J. No action in this case lies against the servant. If he had not paid it over, the plaintiff would have had his option, either to charge him or the company; as in the common case of payment to a goldsmith's servant, who doth not carry it to the account of his master, the party hath an election to go against either; he may charge the servant, because till the money is paid over, the servant receives it to his use; or he may pass by the servant, and make his demand upon the master, because the payment to the servant is made in confidence of the credit given him by the master. *Str.* 480.

A. Com-

A. Complaint of a Servant for wages; on the 20 G. 2. c. 19. and 31 G. 2. c. 11.

Westmorland. THE *information and complaint of* A. S. *late of* ——— *in the county aforesaid, husbandman, exhibited before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, the* ——— *day of* ——— *in the year* ——— *who on his oath saith,*

That at Whitsuntide last he was hired by A. M. *of* ——— *aforesaid in the county aforesaid, to be his servant in husbandry for the term of one half year* [or as the case shall be] *for the wages of* ——— *That he the said* A. S. *hath duly performed the said service; and that he the said* A. M. *refuseth to pay to him the said* A. S. *the wages justly due unto him for the said service: And thereupon he the said* A. S. *prayeth that justice may be done, and that the said* A. M. *may be summoned before me the justice aforesaid, to answer unto the said complaint.*

Before me. A. S.
J. P.

B. Summons of the master thereupon.

Westmorland. { To the constable of ——— in the said County.

WHEREAS *information and complaint hath been made unto me* ——— *one of his majesty's justices of the peace in and for the said county, upon the oath of* A. S. *late of* ——— *in the said county, husbandman, that at Whitsuntide last he the said* A. S. *was hired by* A. M. *of* ——— *aforesaid in the county aforesaid, to be his servant in husbandry for the term of* ——— *for the wages of* ——— *And that he the said* A. S. *hath duly performed the said service; And that he the said* A. M. *doth refuse to pay to him the said* A. S. *the wages justly due unto him for the said service: These are therefore to command you forthwith to summon the said* A. M. *to appear before me at* ——— *in the said county, on* ——— *the* ——— *day of this present month of* ——— *at the hour of* ——— *in the afternoon of the same day, to shew cause why the said wages should not be paid. And be you then there to certify what you shall have done in the premisses. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

C. Order

C. Order for payment of the same.

Westmorland. WHEREAS *information and complaint hath been made unto me* —— *one of his majesty's justices of the peace in and for the said county, upon the oath of* A. S. *of* —— *in the said county, husbandman, that at Whitsuntide last he the said* A. S. *was hired by* A. M. *of* —— *in the said county, husbandman, to be a servant in husbandry, to and with him the said* A. M. *for the space of* —— [or, *artificer, glassman, pitman, labourer,* or otherwise as the case shall be] *and that he the said* A. S. *hath duly performed the said service; and that he the said* A. M. *doth refuse to pay to him the said* A. S. *the wages justly due unto him for such service as aforesaid; And whereas the said* A. M. *having appeared before me, in pursuance of my summons for that purpose, hath not proved to me, that the said wages have been duly paid unto him the said* A. S. *as aforesaid, nor hath shewed to me any just cause why the said wages should not be paid, and hath not paid the same:* [Or, *And whereas it appears to me, upon the oath of* A. C. *constable of* —— *aforesaid, that he the said* A. C. *by virtue of my precept to him directed, did duly summon the said* A. M. *to appear before me at a certain time and place therein prefixed, to shew cause why the said wages should not be paid; and the said* A. M. *hath neglected to appear according to the said summons, and hath not shewed any cause as aforesaid*] *I therefore having duly examined into the truth and matter of the said complaint, and upon due consideration had thereof, do hereby adjudge, determine, and order, that he the said* A. M. *upon due notice hereof, do pay or cause to be paid to him the said* A. S. *the sum of* —— *which appears to me to be just and reasonable to be paid by him the said* A. M. *to him the said* A. S. *as and for his wages as aforesaid. Given under my hand and seal the* —— *day of* —— *in the* —— *year of the reign of* ——.

D. Warrant of distress for the same.

Westmorland. { To the constable of ——.

WHEREAS A. S. *of* —— *in the said county, husbandman, hath complained unto me* —— *one of his majesty's justices of the peace in and for the said county, that* A. M. *of* —— *in the said county, husbandman, hath refused to pay unto him the said* A. S. *the wages justly due unto him for service in husbandry truly and faithfully performed by him the said* A. S. *to him the said* A. M. [Or, as the case

ſhall be] *And whereas the ſaid* A. M. *having appeared before me in purſuance of my ſummons for that purpoſe, hath not proved to me that the ſaid wages have been paid to him the ſaid* A. S. *as aforeſaid, and hath not ſhewed any juſt cauſe why the ſame ſhould not be paid* [Or, *And whereas the ſaid* A. M. *hath been duly ſummoned by me to ſhew cauſe to me why the ſaid wages ſhould not be paid, but he the ſaid* A. M. *hath neglected to appear according to the ſaid ſummons, and hath not ſhewed any cauſe as aforeſaid*] *I therefore the ſaid juſtice, upon due conſideration had thereof, on the* ——— *day of* ——— *now laſt paſt, by writing under my hand and ſeal, did thereupon determine and order, that he the ſaid* A. M. *ſhould pay to him the ſaid* A. S. *the ſum of* ——— *which appeared to me to be juſt and reaſonable to be paid by him the ſaid* A. M. *to him the ſaid* A. S. *as and for his wages as aforeſaid; And whereas it appears to me, that he the ſaid* A. M. *on the ſaid* —— *day of* —— *now laſt paſt, had due notice of my ſaid order, and that due demand of the ſaid ſum of* ——— *was then made of him the ſaid* A. M. *by him the ſaid* A. S. *but that he the ſaid* A. M. *did not then pay, nor hath yet paid the ſame, nor any part thereof; Theſe are therefore to command you to make diſtreſs of the goods and chattels of him the ſaid* A. M. *and if within the ſpace of* [*four*] *days next after ſuch diſtreſs by you made, the ſaid ſum of* —— *together with the reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by the ſale thereof, that you pay the ſaid ſum of* —— *unto him the ſaid* A. S. *returning the overplus upon demand unto him the ſaid* A. M. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being thereout firſt deducted. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year* ———.

E. Complaint of a maſter againſt a ſervant for miſbehaviour on the 20 *G.* 2. *c.* 19.

Weſtmorland. BE *it remembred, that this* —— *day of* —— *in the year* —— A. M. *of* —— *in the county aforeſaid, huſbandman, complaineth and maketh oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that* A. S. *late of* —— *aforeſaid in the county aforeſaid, ſervant in huſbandry to him the ſaid* A. M. *hath in his ſaid ſervice* [or, *employment*] *been guilty of divers miſdemeanors, miſcarriages, and ill behaviour, towards him the ſaid* A. M. *and particularly* [as the caſe ſhall be];

and

and thereupon he the ſaid A. M. *prayeth that juſtice may be done.*

Before me A. M.
J. P.

F. Warrant for the ſervant thereupon.

Weſtmorland. { To the conſtable of ——.

WHEREAS *information and complaint hath been made unto me —— one of his majeſty's juſtices of the peace, in and for the ſaid county, upon the oath of* A. M. *of —— in the ſaid county, huſbandman,* [*artificer, labourer,* or as the caſe ſhall be] *that* A. S. *late of —— aforeſaid in the county aforeſaid, ſervant in huſbandry* [or as the caſe ſhall be] *to him the ſaid* A. M. *hath in his ſaid ſervice* [or, *employment*] *been guilty of divers miſdemeanors, miſcarriages, and ill behaviour, towards him the ſaid* A. M. *and particularly* [as the caſe ſhall be]; *Theſe are therefore to command you forthwith to bring the ſaid* A. S. *before me to anſwer unto the ſaid complaint, and to be further dealt with according to law. Given under my hand and ſeal, the —— day of —— in the —— year of the reign of ——.*

G. Commitment of the ſervant thereupon to the houſe of correction.

Weſtmorland. { To the conſtable of —— in the ſaid county, and to the keeper of the houſe of correction at —— in the ſaid county.

WHEREAS *information and complaint hath been made* —— (the ſame as above, reciting the complaint) *And whereas in purſuance of the ſtatute in that caſe made and provided, I have duly examined the proofs and allegations of both the ſaid parties, touching the matter of the ſaid complaint, and upon due conſideration had thereof, have adjudged and determined that he the ſaid* A. O. *hath in his ſervice as aforeſaid been guilty of divers miſdemeanors, miſcarriages, and ill behaviour, towards him the ſaid* A. M. *and particularly* [here ſet forth the ſpecial offence or offences]: *Theſe are therefore to command you the ſaid conſtable forthwith to convey the ſaid* A. S. *to the ſaid houſe of correction at —— aforeſaid, and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the ſaid keeper to receive the ſaid* A. S. *into your cuſtody in the ſaid houſe of correction, there to remain, and be corrected, and held*

to

to hard labour, for the ſpace of one kalendar month [or for a leſſer time] *from the date hereof. And for your ſo doing, this ſhall be your ſufficient warrant. Given under my hand and ſeal, the ——— day of ——— in the ——— year of the reign of ———.*

H. Or otherwiſe he may be puniſhed by abatement of wages, as follows:

THE ſame as above to the end of the adjudication:— *I do therefore hereby order, as a puniſhment for the ſaid offence* [or, *offences*] *that the ſaid* A. S. *ſhall abate from his wages to be paid to him by the ſaid* A. M. *the ſum of ——— and do hereby diſcharge the ſaid* A. M. *from the payment of the ſaid ſum of ——— as part of the wages of him the ſaid* A. S. *Given under my hand and ſeal the ——— day of ——— in the ——— year ———.*

I. Or otherwiſe he may be diſcharged, thus:

——— *I do therefore hereby order, as a puniſhment for the ſaid offence* [or, *offences*] *that the ſaid* A. S. *be diſcharged, and do hereby diſcharge him the ſaid* A. S. *from his ſaid ſervice* [or, *employment*] *and the ſaid* A. M. *from keeping him the ſaid* A. S. *Given under my hand and ſeal the ——— day of ——— in the ——— year ———.*

K. Complaint of a ſervant againſt the maſter, for ill uſage; on the 20 *G.* 2. *c.* 19.

Weſtmorland. BE *it remembred, that this ——— day of ——— in the year ———* A. S. *of ——— in the county aforeſaid, huſbandman,* [*labourer*, &c.] *complaineth and maketh oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that at Michaelmaſs laſt he the ſaid* A. S. *was hired by* A. M. *of ——— aforeſaid in the county aforeſaid, huſbandman, to be ſervant in huſbandry to him the ſaid* A. M. *for the ſpace of ———* [or, as the caſe ſhall be]; *And that he the ſaid* A. S. *did accordingly at Michaelmaſs laſt as aforeſaid enter upon, and afterwards until this preſent time hath continued, and doth continue, in the ſaid ſervice* [or, *employment*]; *And that he the ſaid* A. M. *during the ſaid ſervice, hath miſuſed him the ſaid* A. S. *and particularly* [here ſet forth the ſpecial offences]: *And thereupon he the ſaid* A. S. *prayeth that juſtice may be done in the premiſſes.*

Before me A. S.
J. P.

L. Summons of the master, on complaint of the servant, for ill usage; on the 20 *G.* 2. *c.* 19.

Westmorland. } To the constable of ———.

WHEREAS *complaint hath been made unto me* —— *one of his majesty's justices of the peace in and for the said county, upon the oath of* A. S. *of* ——— *in the said county, husbandman,* [*labourer,* &c.] *that at Michaelmas last he the said* A. S. *was hired by* A. M. *of* ——— *aforesaid in the said county, husbandman, to be servant in husbandry to him the said* A. M. *for the space of* ——— [or, as the case shall be] *and that he the said* A. S. *did accordingly at Michaelmas last as aforesaid enter upon, and afterwards until this present time hath continued, and doth continue, in the said service* [or *employment*]: *And that he the said* A. M. *during the said service hath misused him the said* A. S. [*refused necessary provision, been guilty of cruelty or other ill treatment,* mentioning the particulars] *These are therefore to require you in his majesty's name, to summon the said* A. M. *to appear before me on* —— *next, at the hour of* —— *in* ——— *in the said county, at the hour of* ——— *in the afternoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the execution hereof. Given under my hand and seal the* —— *day of* —— *in the* ——— *year* ———.

M. Discharge of the servant thereupon.

THE same as before to the end of the complaint,— *And whereas the said* A. M. *in pursuance of my summons for that purpose hath appeared before me, to answer unto the said complaint, but hath not proved that he is not guilty of the said complaint and charge; but on the contrary it hath been fully and duly proved before me, that he the said* A. M. *hath misused him the said* A. S. *in his service as aforesaid, and particularly* [here set forth the special offence or offences]; ——— [Or, *And whereas it appears to me upon the oath of* A. C. *constable of* ——— *aforesaid, that he the said* A. C. *by virtue of my precept to him directed, did duly summon him the said* A. M. *to appear before me at a reasonable time therein prefixed, to answer unto the said complaint, and he the said* A. M. *hath neglected to appear according to the*

the said summons] : *I do therefore hereby order, in pursuance of the statute in that case made, that he the said* A. S. *be discharged, and do hereby discharge him the said* A. S. *from his said service* [or, *employment.*] *Given under my hand and seal, the* ——— *day of* ——— *in the year* ———.

Sessions.

Session, what.

1. THE sessions of the peace is a court of record, holden before two or more justices, whereof one is of the *quorum*, for execution of the authority give them by the commission of the peace, and certain statutes and acts of parliament. *Dalt. c.* 185.

Difference between general, quarter, and special sessions.

2. It seems that the *general* sessions, and *quarter* sessions, are not synonymous; but that the quarter sessions are a species only of the general sessions, and that such sessions only are properly called general quarter sessions, which are holden in the four quarters of the year, in pursuance of the statute of the 2 *H.* 5. and that any other sessions holden at any other time for the general execution of the justices authority, which by the said statute they are authorized to hold oftner than at the times therein specified, if need be, may be properly called *general* sessions, and that those holden on a special occasion for the execution of some particular branch of their authority, may properly be called *special* sessions. 2 *Haw.* 42.

At what time the sessions shall be kept.

3. By the 12 *R.* 2. *c.* 10. The justices shall keep their sessions in every quarter of the year at least, and by three days, if need be; on pain of being punished according to the discretion of the king's council, at the suit of every man that will complain.

And by the 2 *H.* 5. *st.* 1. *c.* 4. the particular time in every quarter of the year shall be as follows; to wit, in the first week after the feast of St. *Michael*, in the first week after the *Epiphany*, in the first week after the clause of *Easter*, and in the first week after the translation of St. *Thomas* the martyr; and more often if need be.

Except in *Middlesex*; where the justices shall keep their sessions twice in the year at least; and more often (if need be) for any riot or forcible entry. 14 *H.* 6. *c.* 4.

The strict, regular exposition of the aboveſaid statute of the 2 *H.* 5. is, that if the feast day fall upon the *sunday*,

the ſeſſions ſhall be held in the week following, and not the ſame week. 2 *H. H.* 49.

Yet it is very plain, that the quarter ſeſſions are variouſly held in ſeveral counties, ſome at one day, and ſome at another, yet it hath been ruled, that theſe are each of them good quarter ſeſſions within the ſeveral acts that relate to quarter ſeſſions; for theſe acts, eſpecially the 2 *H.* 5. is only directive and in the affirmative, and therefore, tho' the ſeſſions are held on another day, according to the general direction of the 12 *R.* 2. yet they are quarter ſeſſions. 2 *H. H.* 50.

Where the ſeſſions ſhall be holden.

4. There is no determination by any ſtatute, of any particular place for the ſeſſions to be kept, ſo it be within the county. And if a place within the country be incorporated, and have juſtices of its own, yet the ſame remains part of the county, and the juſtices of the county may notwithſtanding hold their ſeſſions there, although it may be that they ſhall not intermeddle with matters ariſing there, ſave only ſuch as happen in their ſeſſions, or with relation thereunto. *Dalt. c.* 185.

Precept to ſummon the ſeſſions.

5. And from hence it ſeems to follow, that any two ſuch juſtices may direct their precept under their teſte to the ſheriff, for the ſummons of the ſeſſions, thereby commanding him to return a grand jury before them, or their fellow juſtices at a certain day and place, and to give notice to all ſtewards, conſtables, and bailiffs of liberties, to be preſent and do their duties at ſuch day and place, and to proclaim in proper places, throughout his bailiwick, that ſuch ſeſſions will be holden at ſuch day and place, and to attend there himſelf to do his duty. 2 *Haw.* 41.

And ſuch precept ſhould bear teſte, or be dated, fifteen days before the return, and ought forthwith to be delivered to the ſheriff, to the end he may have ſufficient time to proclaim the ſeſſions, to ſummon and return the ſeveral juries, and to warn all officers and others that have buſineſs there, to attend. *Nelſ.* Introduct. 35.

And it is ſaid that ſuch a precept by any two juſtices cannot be ſuperſeded by any of their fellows, but only by writ out of chancery. 2 *Haw.* 41.

But the ſeſſions without a previous ſummons is good, but then no man ſhall loſe any thing for default of his appearance there, becauſe no man had notice of their ſitting. *Lamb.* 381. Nor can any one be compelled to appear there. L. *Raym.* 1238.

Mr. *Lambard* puts a caſe from Mr. *Marrow*, that if two or more juſtices appoint the ſeſſions to be holden in one

town, and so many more appoint a sessions in another town the same day, and holds they may be so held, and that the presentments in both are good; but that appearance at one, is a discharge of service at the other. But it may be well questioned whether they are not both void; for they make two courts of that which ought to be intire and but one: for it doth not appear that the justices are required or enabled to hold more than one sessions at a time, and so their authority being equal, and seeing no preference can be made by the priority of time, or nature of the service, they may be taken to be both void. However the justices, by whose forwardness such division happens, or on whom such miscarriage is chargeable, are punishable for the same by information and fine, or putting out of the commission, as the cause shall require. *Dalt. c.* 185.

Persons who are to appear there.

6. The persons who ought to appear at these sessions are as follows:

(1) The *justices of the peace*; these without doubt are compellable to appear at the sessions, for without their appearance the sessions cannot be holden. *Dalt. c.* 185.

But a justice ought not to join in an order at sessions wherein himself is concerned, nor ought his name to be in the caption. An order was quashed for that reason. 2 *Salk.* 607.

(2) The *custos rotulorum*, who hath custody of the rolls of sessions, ought (by the commission) to be there by himself, or by his deputy, who is the clerk of the peace. *Dalt. c.* 185.

(3) The *sheriff* also, by virtue of the commission, by himself or his deputy; to receive the fines, to return jurors, to execute process, and what else to his office doth appertain. *id.*

(4) All *coroners*. id.

(5) The *constables of hundreds* (that is, high constables) and all other officers to whom any warrant hath been directed, in order to make return thereof. *id.*

(6) All *bailiffs of hundreds and liberties*, in respect they are bound to give an account of all sessions process. *id.*

(7) The *gaoler*; to bring thither his prisoners, and to receive such as may be committed. *Dalt. c.* 185.

(8) The *keeper of the house of correction*, to give in a kalendar and account of persons in his custody. *id.*

(9) All jurors returned by the sheriff, by virtue of the aforesaid precept. And the jurors not appearing according to their summons, are punishable by loss of issues, which usually make part of the estreats of sessions. *id.*

(10) All persons bound by *recognizance* to answer, or to prosecute and give evidence. *id.*

7. And all persons may freely attend at the sessions for the advancement of publick justice, and for the service of the king. And to this end they are (as it were) invited thither by a certain freedom of access, and by protection from common arrest; a thing that is incident to every court of record, and without which, justice would be greatly hindred. So that if a man come voluntarily to the sessions, either to prefer a bill of indictment, or to give information against another, or to tender a fine upon an indictment touching himself, or do come compelled to make appearance for facing his recognizance, and be arrested by the sheriff upon common and original process, in his coming thither, or during his tarrying there; it seemeth (Mr. *Lambard* says) that (upon examination of the matter under his oath) he shall be discharged thereof by the privilege of this court, even as it is used in the higher courts at *Westminster*. Lamb. 402. Freedom of access to the sessions.

But Mr. *Hawkins* puts it more doubtfully, saying, It is questioned whether the sessions, as also all courts of record, may not discharge any person arrested, during his journeying to or from such courts, or necessary attendance there, by process from any other court: However it seems to be agreed, that any such court may discharge a person who shall be so arrested in the face of it. 2 *Haw.* 5.

T. 7 *G.* 2. It seemeth to have been agreed in the argument upon Col. *Pitt*'s case (which was an arrest in his return from parliament) that not only in the high court of parliament, but also in the inferior courts, the parties to the suit, and also the witnesses, are protected in going, continuing, and returning. And this returning hath never been very nicely scanned, so as to require a man to go the direct road: and the protection is not forfeited by the plea of *going out of the way*, because it may be the party went to buy a horse, victuals, or other necessaries for his journey. Neither is the law so strict in point of time, as to require a person to set out immediately after the trial is over; and for that was cited the case of *Hatch* and *Bliffet*, *T.* 13 *An.* She had a trial at *Winchester* assizes, which was over on *Friday* at four in the afternoon: she staid there till after dinner on *Saturday*; and in the evening at seven was arrested going home to *Portsmouth*, which is twenty miles: and the court held, that she ought to be discharged, her protection not being expired, and a little deviation of loitering would not alter it. *Str.* 987.

But where a man is arreſted by proceſs out of the courts at *Weſtminſter*, it doth not ſeem that the juſtices of the peace (unleſs the arreſt is made in the ſeſſions) have power to diſcharge him; but on application to the court from whence the proceſs iſſued, ſuch court probably may diſcharge him, and puniſh the perſon who made the arreſt.

Who ſhall act in the ſeſſions as ſolicitor.

8. By the 22 *G.* 2. *c.* 46. No perſon ſhall act as ſolicitor, attorney, or agent, or ſue out any proceſs at any general or quarter ſeſſions, either with reſpect to matters of a criminal or civil nature, unleſs he is admitted and inrolled according to law; on pain of 50 *l.* to him who ſhall ſue in 12 months, with treble coſts: And if any attorney ſhall permit any perſon to make uſe of his name in the ſaid court, he ſhall in like manner forfeit 50 *l.*

And no clerk of the peace, under-ſheriff, or their deputies, ſhall act as ſolicitor, attorney, or agent, or ſue out any proceſs at ſuch ſeſſions, on the like pain of 50 *l.*

The ſeſſions may do what two juſtices may.

9. Where authority is given to two juſtices to do any act, the ſeſſions may do it, in all caſes, except where appeal is directed to the ſeſſions. L. *Raym.* 426.

Juſtices may bind over for offences cognizable at ſeſſions.

10. Juſtices may iſſue their warrants for apprehending perſons charged of crimes within the cognizance of the ſeſſions, and bind them over to appear there, although the offender be not yet indicted. 1 *H. H.* 579. But as this practice is founded rather upon long uſage than any expreſs law; it ſeemeth better, in ordinary caſes (not amounting to felony) to leave a man to the common proceſs of the court, in caſe of an indictment to be found againſt him: And if no indictment ſhall be found, it ſeemeth hard to deprive a man of his liberty, when he hath been in no fault.

Seſſions to proceed by indictment.

11. If juriſdiction be given to the ſeſſions, to hear and determine, and doth not ſay by information, this ſhall be by indictment, and not upon information. *Dalt. c.* 191.

Need not give their reaſons.

12. The ſeſſions are not obliged to give any reaſon of their judgment in the orders they make, no more than any other of the courts of law. 2 *Salk.* 607.

Orders may be altered the ſame ſeſſions.

13. By *Holt* Ch. J. The ſeſſions is all as one day, and the juſtices may alter their judgments, at any time whilſt it continues. 2 *Salk.* 606.

Court equally divided.

14. In the caſe of *Thornby* and *Fleetwood*, *T.* 6 *G.* (which was upon a writ of error in the king's bench brought againſt a judgment given in the court of common pleas) the court was equally divided; whereupon it was conſidered what was further to be done. And after ſeveral expedients, which were judged impracticable, the parties at laſt conſented that the

the judgment ſhould be affirmed, ſo that the caſe thereupon might come before the houſe of lords for a final determination. And *Pratt* Ch. J. delivered the opinion of the court thus: The plaintiffs in error move us for an affirmance; as to that you ſee the court is divided, and there can be no rule: but in this caſe, becauſe the party againſt whom it is to be affirmed, is deſirous and willing it ſhould be ſo, we are all of opinion that upon his conſent the judgment of the common pleas may be affirmed. But leſt this be brought in future ages as a precedent of an affirmance upon a diviſion, we direct the officer to make the rule ſpecial in this caſe, on recital of the difference in opinion amongſt the judges, and the conſent of the party. *Str.* 383, 4.

T. 8 *G.* 2. *K.* and the juſtices of *Weſtmorland.* Order of two juſtices of the borough for removing a poor family; appeal to the ſeſſions of the county, at which the juſtices were equally divided; ſo no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the juſtices of the county in general, to proceed on the appeal. And it was ſaid, that the juſtices ought in this caſe to have adjourned the appeal, or continued it over to a ſubſequent ſeſſions, till by the coming of more juſtices it might have been determined. *Seſſ. C. V.* 2. 193.

Or if the court ſhall be ſtill divided, as ſo it may happen in ſmall counties or towns corporate where the juſtices are but few, or where the number is reduced by reaſon of the reſt being intereſted; in order that the cauſe may not be hung up for ever, it may be adviſable (according to the courſe preſcribed in the caſe of *Thornby* and *Fleetwood* abovementioned) for the court, by conſent of the parties, to affirm or quaſh, and thereupon ſtate the caſe ſpecially, to be laid before the judges of aſſize, or rather before the court of king's bench; for the judges of aſſize are oftentimes ſufficiently employed with the proper buſineſs of the circuit, without being importuned with theſe matters of inferior conſequence.

15. A judge of *niſi prius* by conſent of parties may make a rule to refer a cauſe; but the ſeſſions cannot do ſo, tho' by conſent. They may refer a thing to another to examine, and make report to them for their determination, but cannot refer a thing to be determined by the other. 2 *Salk.* 477. Seſſions cannot refer.

16. It ſeemeth certain, that the ſeſſions hath no authority to amerce any juſtice, for his non-attendance at the ſeſſions, as the judges of aſſize may for the abſence of any ſuch juſtice at the gaol delivery: for it is a general rule, How far the ſeſſions hath power over its own members.

that *inter pares non eſt poteſtas*, it being reaſonable rather to refer the puniſhment of perſons in a judicial office, in relation to their behaviour in ſuch office, to other judges of a ſuperior ſtation, than to thoſe of the ſame rank with themſelves. And therefore it ſeems to have been holden, that if a juſtice at the ſeſſions, who is not of the *quorum*, ſhall uſe ſuch expreſſions towards another who is of the *quorum*, for which if he were a private perſon he might be committed or bound to his good behaviour, yet the ſeſſions hath no authority to commit him, or to bind him to his good behaviour: And yet it ſeems to be agreed, that if a juſtice give juſt cauſe to any perſon to demand the ſurety of the peace againſt him, he may be compelled by any other juſtice to find ſuch ſecurity; for the publick peace requires an immediate remedy in all ſuch caſes. 2 *Haw.* 41, 42.

Whether they may iſſue a capias utlagatum.

17. The ſeſſions may proceed to outlawry in caſes of indictments found before them; and that, by the common law: and in caſes of popular actions, by the ſtatute of the 21 *J. c.* 4. But they cannot iſſue a *capias utlagatum*, but muſt return the record of the outlawry into the king's bench, and there proceſs of *capias utlagatum* ſhall iſſue. 2 *H. H.* 52. *Lamb.* 521.

But by the 12 *Co.* 103. They that have power to award proceſs of outlawry, have alſo a power to award a *capias utlagatum*, as incident to their authority and juriſdiction.

Whether they may award an attachment.

18. Generally, the ſeſſions cannot award an attachment for contempt in not complying with their orders; but the ordinary and proper method is by indictment. *H.* 8 *G.* 2. *K.* and *Bartlett.* *Seſſ. C. V.* 2. 176.

Juſtices not puniſhable for what is done in ſeſſions.

19. Generally, it is ſaid, that the juſtices are not puniſhable for what they do in ſeſſions. *Stam.* 173. Unleſs there be ſome manifeſt act of oppreſſion, or wilful abuſe of power. 2 *Barnardiſt.* 249, 250.

Manner of proceeding in ſeſſions.

20. The manner of proceeding at the ſeſſions, is as follows: Firſt, the juſtices being met, the uſual courſe is with three oyes to proclaim the ſeſſions, and then read the commiſſion of the peace. *Dalt. c.* 185.

Commiſſion read.

Grand jury ſworn.

21. Then the grand jury are called and ſworn, and the charge given to them. *id.*

Taking oaths.

22. If there be any who are to take the oaths, in order to qualify them for offices, this muſt be done between the hours of 9 and 12 in the forenoon, and not otherwiſe. 25 *G.* 2. *c.* 2. *ſ.* 2.

Acts to be read.

23. The king's proclamation againſt profaneneſs and immorality is alſo to be read; and likewiſe there are divers acts of parliament required to be read in the ſeſſions, as the

5 *El.*

5 *El. c.* 1. againſt popery, and the riot act 1 *G. c.* 5. and the black act 9 *G. c.* 22. And the 11 & 12 *W. c.* 15. about ale meaſures; 30 *C.* 2. *c.* 3. about burying in woollen; are required to be given in charge at the ſeſſions. And the 4 & 5 *W. c.* 24. 7 & 8 *W. c.* 32. 3 & 4 *An. c.* 18. and 3 *G.* 2. *c.* 25. concerning jurors, are to be read in *Midſummer* ſeſſions yearly. And the 2 *G.* 2. *c.* 24. againſt bribery and corruption in elections of members of parl a-ment is to be read at every *Eaſter* ſeſſions.

Recognizances to give evidence called.

24. Then the recognizances may be called, eſpecially ſuch as are to proſecute and give evidence, that ſo bills may be drawn and prepared. *Dalt. c.* 185.

Trying for felonies at the ſame ſeſſions.

25. Although it is in many places uſed, to try a man for felony the ſame ſeſſions in which the indictment is found, yet it ſeems highly reaſonable, if the priſoner deſire it to be deferred, and ſhew cauſe probable, to defer it. For that, 1. The ſeſſions are holden oftner than the aſſizes. 2. The ſpeedy trials ſeem to be in favour of the priſoner, and *volenti non fit injuria.* 3. If a traverſe upon an indictment of nuſance be not triable the ſame ſeſſions that it is joined, but a man ſhall have time to provide for it; much more in matter of life, where uſually the party is in priſon, and may well be ſuppoſed leſs able to provide for it, and in the nature of it requires greater conſideration. *Dalt. c.* 185.

And, in another place, it is ſaid, that it is made a doubt, whether a trial can be had of a felon the ſame ſeſſions he pleads, unleſs he conſents to it. *Dalt. c.* 185.

Bills before the grand jury.

26. The bills being ready, the parties bound over for that purpoſe are ſworn to give evidence upon the bills; and the courſe is, to bid the evidence go with the grand jury, where they conſider of the bill, and either find it or not find it, and then return it. *id.*

Other buſineſs whilſt the grand jury are gone out; ſuch as motions, appeals, recognizances.

27. Whilſt the jury is gone out of court, the uſual way is to proceed upon motions and orders touching ſettlements, baſtardy, nuſances, and the like; and to call perſons bound over to the peace or good behaviour, but it may not be beſt to diſcharge them till the end of the ſeſſions, becauſe bills may be preferred againſt them. *id.*

Errors in form to be amended.

28. Upon appeals to be made to the ſeſſions againſt judgments or orders, the juſtices ſhall cauſe any defect of form in ſuch original judgments or orders, to be rectified and amended, and then ſhall proceed upon the merits. 5 *G.* 2. *c.* 19. *ſ.* 1.

Certificates o nuſances re-moved.

29. Mr. *Shaw* (Tit. *Seſſions*) ſays, no indictment for a nuſance ſhall be quaſhed or diſcharged, unleſs two juſtices do certify to the court upon their own view, either by certi-

ficate under their hands, or in perſon, that the nuſance is removed; and for this he quotes 3 *Cro.* 584. *Layton*'s caſe. But that caſe only mentions a certificate in general, and the certificate in that caſe was not a certificate of two juſtices, but of ſeveral inhabitants adjoining; and it ſhould ſeem that the ſeſſions may be well ſatisfied of ſuch removal of a nuſance, by other evidence, as well as by that of two juſtices.

Traverſes tried. 30. Then may be called the perſons bound by recognizance at the laſt ſeſſion, to proſecute their traverſes at the preſent ſeſſions. For if a perſon indicted of a treſpaſs or other miſdemeanor, do appear, and ſhall plead not guilty, and traverſe the indictment, he ſhall enter into recognizance to proſecute his traverſe at the next quarter ſeſſions. For in *Bumſtead*'s caſe, 11 *C.* The whole court was of opinion, that juſtices of the peace may not inquire, try, and determine civil offences, in one and the ſame day; for the party ought to have a convenient time to provide for the trial. *Cro. Car.* 448.

And on the trial of a traverſe, the defendant muſt appear in the court, at the bar, in his proper perſon; and then the indictment is read to the jury; and the proſecutor and his witneſſes are called to give evidence, and are heard; and if the defendant is found guilty, the court ſets a fine upon him adequate to the offence, or other puniſhment as the law directs. *Crown Cir.* 50, 51.

In caſe of treſpaſs and aſſault, the court frequently recommends the defendant to talk with the proſecutor, that is, to make him amends for the injury done him; and if the proſecutor comes and acknowledges a ſatisfaction received, the court will ſet a ſmall fine on the defendant, as 3s. 4 d. or 12 d. *Cro. Cir.* 52.

Sometimes the proſecutor and defendant agree, before the defendant pleads to the indictment; and then the defendant comes into court in his proper perſon, and pleads guilty to the indictment; and upon proving, by a ſubſcribing witneſs, a general releaſe executed by the proſecutor, the defendant ſubmits to a ſmall fine, ſuch as the court is pleaſed to impoſe. *Cro. Cir.* 52.

There are frequent proſecutions at the ſeſſions for trifling aſſaults, in which caſe it is adviſeable for a defendant not to put himſelf to the expence of trying the indictment; but to give notice to the proſecutor, that he intends to plead guilty, to the indictment; in which caſe the proſecutor attends the court with his witneſſes, and gives evidence of the nature of the offence; and then the court proceeds

to

to fine the defendant for his miſbehaviour towards the proſecutor: But before that is done, the court will admit the defendant to call ſuch witneſſes as he deſires, and will examine them by way of mitigation. *Cro. Cir.* 54.

31. And becauſe the arraignment and trial of priſoners is a great part of the buſineſs of the ſeſſions, I will take notice of ſome parts thereof, and proceedings thereupon: Trial for petit larceny and other felonies.

Towards the end of the ſeſſions, when it appears what bills are come in againſt the priſoners, the gaoler being called to ſet his priſoners to the bar, and the crier being called to make a bar, that is, to diſpoſe of the company, that a way be made open from the court to the priſoners, that the court, jury, and priſoners may ſee each other, one of the priſoners is called to; *A. B.* hold up thy hand. *Dalt. c.* 185. Arraignment.

Yet it is not neceſſary that he hold up his hand at the bar, or be commanded ſo to do; for this is only a ceremony, for making known the perſon of the priſoner to the court, and if he anſwers that he is the ſame perſon, it is all one. 2 *Haw.* 308. Holding up the hand.

Then he is acquainted with the effect of the charge laid againſt him, Thou *A. B.* ſtandeſt indicted, by the name of *A. B.* for that thou ——— (and ſo recite the indictment). How ſayeſt thou, *A. B.* Art thou guilty of this felony and petit larceny whereof thou ſtandeſt indicted, or not guilty? *Dalt. c.* 185. Guilty or not guilty.

If he make no anſwer at all, and will not plead, it is beſt to aſk him three or more times, and to tell him the danger of ſtanding mute, and the grievouſneſs of the judgment of the *peine fort & dure*; and yet if he will ſtand mute, nothing more can be done concerning him till judgment, but to record it. *id.* Mute.

But if it be for petit larceny only, he ſhall not be put to his *peine fort & dure*, as in caſe of grand larceny, but he ſhall have the like judgment as if he had confeſſed the indictment. 2 *Haw.* 329.

If he pleads privilege, it hath been adjudged, that where proceedings are merely at the ſuit of the king, as upon indictment, or upon information brought by the attorney general, no privilege ſhall be allowed; but where the proceedings are at the ſuit of the king and of the party, as in caſe of a common informer, there the defendant may have his privilege. 1 *Lutw.* 62.

If he anſwer that he is guilty, then the confeſſion is recorded, and no more done till judgment. *Dalt. c.* 185. Confeſſion.

But

Trial by the country.

But if he say, not guilty, he is then asked; how wilt thou be tried? *Dalt. c.* 185.

Which was formerly a very significant question, though it is not so now; because anciently trial by battel, and trial by ordeal was used, as well as by the country, or a jury.

Therefore it is now usually answered, By god and the country. *Dalt. c.* 185.

Humanity towards the prisoner.

Mr. *Hawkins* observes, that every person at the time of his arraignment, ought to be used with all the humanity and gentleness which is consistent with the nature of the thing, and under no other terror or uneasiness than what proceeds from a sense of his guilt, and the misfortune of his present circumstances; and therefore ought not to be brought to the bar in a contumelious manner, as with his hands tied together, or any other mark of ignominy and reproach; nor even with fetters on his feet, unless there be some danger of a rescous or escape. 2 *Haw.* 308.

And the court ought to exhort him to answer without fear, and to acquaint him that he shall have justice done to him. 2 *Inst.* 316.

Witnesses called.

Next, the prisoner having put himself upon his country, the prosecutors are called on their recognizances, to give evidence. *Dalt. c.* 185.

Jury called.

Then the jury are called on their pannel, thus, You good men that are returned and impanelled, to try the issue joined between our sovereign lord the king and the prisoner at the bar, answer to your names. *Dalt. c.* 185.

Proclamation.

Which done, and they appearing a full jury, a proclamation is made; If any can inform the king's attorney, or this court, of any treasons, murders, felonies, or other misdemeanors against *A. B.* the prisoner at the bar, let them come forth, for the prisoner stands upon his deliverance. *Dalt. c.* 185.

Challenge.

Then it is said to the prisoner, You prisoner at the bar, the persons that you shall now hear called, are to pass upon your trial (upon your life and death, if it is a capital offence); if you will challenge them, or any of them, you must challenge them as they come to the book to be sworn, and before they be sworn. *Dalt. c.* 185.

Jury sworn.

Then call the foreman of the jury, and say unto him, Lay your hand on the book, and look upon the prisoner; You shall well and truly try, and true deliverance make, between our sovereign lord the king, and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to your evidence: So help you god.

Then

Then call the second, and so swear him in like manner, and so on to 12, and neither more nor less. 2 *H. H.* 293.

Then count them 12, and say, You good men that are sworn, you shall understand, that *A. B.* now prisoner at the bar, stands indicted, for that he ——— (and so recite the indictment): To which indictment he hath pleaded not guilty, and for his trial hath put himself upon god and the country, which country you are; so that your charge is, to inquire whether he be guilty of the felony or petit larceny whereof he stands indicted, or not guilty: If you find him guilty, you shall say so, and inquire what goods and chattels he had at the time of the said felony and petit larceny committed, or at any time since: (Or, if it be for felony above petit larceny, — then, what goods and chattels, lands and tenements he had at the time of the said felony committed, or at any time since:) If you find him not guilty, you shall inquire, whether he did fly for it, and if you find that he fled for it, you shall inquire what goods and chattels he had at the time of such flight. If you find him not guilty, and that he did not fly for it, you shall say so, and no more; and so hear your evidence. 2 *H. H.* 293, 294. *Dalt. c.* 185. Jury charged.

Then call the witnesses, and swear them, one by one, thus: *The evidence that you shall give on the behalf of our sovereign lord the king, against* A. B. *prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth: So help you god.* Dalt. c. 185. Witnesses sworn.

When the witnesses for the king have been examined, if the prisoner desires that any witnesses should be examined for him, they must be examined also on oath. Witnesses for the prisoner.

On trials of this nature, the prisoner shall not have counsel allowed to him, unless a point of law arise, proper to be debated; nor a copy of the indictment. 2 *Haw.* 400, 402. Prisoner not to have counsel.

But in offences under felony, a defendant may be heard by his counsel. *Wood. b.* 4. *c.* 5.

Otherwise, the court is to be of counsel with the prisoner, and ought to advise him for his good, and not take advantages too strictly against him. *Dalt. c.* 185. Court to be of counsel with him.

When the prisoner hath done, and hath been heard all that he hath to say in his defence, the evidence is summed up by the court to the jury. And if they cannot agree on their verdict at the bar, a bailiff must be sworn to keep the jury, thus; *You shall swear that you shall keep this jury, without meat, drink, fire, or candle; you shall suffer none to speak* Evidence summed up.

ſpeak to them, neither ſhall you ſpeak to them yourſelf, but only to aſk them whether they are agreed: So help you god. id.

Verdict. The jury coming back, the priſoner is brought to the bar; then the jury is called; they appearing, ſay, Set *A. B.* to the bar; Who being there, ſay, Look upon the priſoner; how ſay you, is *A. B.* guilty of the felony (or as the caſe is) whereof he ſtands indicted, or not guilty? If they ſay, not guilty, bid him down upon his knees. If they ſay, guilty; record it, and bid him be taken away. Then ſay, hearken to the verdict as the court hath recorded it; You ſay, *A. B.* is guilty [or, is not guilty] of the felony whereof he ſtands indicted. *id.*

Judgment. Then make a proclamation and ſay, All manner of perſons keep ſilence, whilſt judgment is giving againſt the priſoner at the bar, upon pain of impriſonment. Then ſet the priſoner to the bar, and give the ſentence. *id.*

Adjournment of the ſeſſions. 32. Where the ſeſſions is adjourned, the ſtile of the ſeſſions ought not to run *at ſuch a ſeſſions held by adjournment*; but the original meeting of the ſeſſions ought to be ſet forth, and that it was continued from thence to ſuch further time by adjournment. *Str.* 832, 865.

But ſuch adjournment ought not to be beyond the time of meeting of the next quarter ſeſſions. As in the caſe of the *King* and *Grince*, *T.* 4 *G.* An indictment was found before the juſtices for the county of *Lincoln*, againſt a conſtable for refuſing to obey an order of the juſtices; and the defendant was tried, convicted, and had judgment given againſt him, at a general ſeſſions held the 3d day of *May* (which was after the *Eaſter* ſeſſions began) by the adjournment of the *Epiphany* ſeſſions: But by the court of king's bench the judgment was reverſed; becauſe the juſtices cannot continue one general ſeſſions to a day ſubſequent to the time appointed by the 2 *H.* 5. *c.* 4. for the holding another original ſeſſions. *Vin.* Seſſ. W. 7.

Wages of the juſtices, and eſtreats. 33. By the 12 *R.* 2. *c.* 10. The juſtices ſhall take for their wages 4 *s.* the day for the time of their ſeſſions, and their clerk 2 *s.* of the fines and amerciaments, riſing and coming of the ſame ſeſſions, by the hands of the ſheriffs. And the lords of franchiſes ſhall be contributory to the ſaid wages, after the rate of their part of fines and amerciaments.

But no duke, earl, baron, or baronet, ſhall take any wages. 14 *R.* 2. *c.* 11.

And the eſtreats of the juſtices ſhall be doubled, and the one part delivered by them to the ſheriff, to levy the money thereof riſing, and thereof to pay the juſtices their wages

wages by the hand of the ſheriff, by indenture betwixt them thereof to be made. 14 *R.* 2. *c.* 11.

34. The fees in ſeſſions for traverſing, trying, or diſ- Fees in ſeſſions.
charging indictments, diſcharging recognizances of the peace and good behaviour, and the like, do vary according to the cuſtom of the country; and in that place the cuſtom of the place is to be obſerved. *Dalt. c.* 41.

By *Holt* Ch. J. The court cannot commit for non-payment of fees; for if there is right, there is remedy; and *indebitatus aſſumpſit* will lie, if the fee is certain; if uncertain, *quantum meruit*. L. Raym. 703.

Precept to ſummon the ſeſſions.

Weſtmorland. J. P. *and* K. P. *eſquires, juſtices of our ſovereign lord the king, aſſigned to keep the peace in the county of* ——— *aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed in the ſaid county, and one of us of the quorum; To the ſheriff of the ſame county, greeting: On the behalf of our ſaid ſovereign lord the king, we command you, that you omit not, by reaſon of any liberty within your county, but that you enter therein, and that you cauſe to come before us, or others, juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, on* ——— *the* ——— *day of* ——— *now next enſuing, at the hour of ten in the forenoon of the ſame day, at* ——— *in the ſaid county,* 24 *good and lawful men of the body of the county aforeſaid, then and there to enquire, preſent, do and perform, all and ſingular ſuch things, which on the behalf of our ſaid ſovereign lord the king ſhall be injoined them: Alſo that you make known to all coroners, keepers of gaols and houſes of correction, high conſtables, and bailiffs of liberties, within the county aforeſaid, that they be then there to do and fulfil thoſe things which by reaſon of their offices ſhall be to be done: Moreover, that you cauſe to be proclaimed through the ſaid county in proper places the aforeſaid ſeſſions of the peace to be held at the day and place aforeſaid: And do you be then there, to do and execute thoſe things which belong to your office: And have you then there as well the names of the jurors, coroners, keepers of gaols, and of houſes of correction, high conſtables, and bailiffs aforeſaid, as alſo this precept. Given under our ſeals at* A. *in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

When

When the ſheriff hath received this precept, he muſt direct ſeveral warrants to the ſeveral bailiffs of hundreds and liberties, containing in them the ſubſtance of the ſaid precept.

The ſtile of the ſeſſions.

Weſtmorland. THE *general quarter ſeſſions of the peace, holden at* ——— *in and for the ſaid county, on the* ——— *day of* ——— *in the* ——— *year of the reign of our ſovereign lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, before* J. P. *and* K. P. *eſquires, and others, juſtices of our ſaid ſovereign lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, and of the quorum, and ſo forth.*

Condition of a recognizance to appear and give evidence at the ſeſſions, in caſe where the king is a party.

THE *condition of this recognizance is ſuch, that if the abovebound* A. W. *ſhall perſonally appear at the next general quarter ſeſſions of the peace, to be holden at* ——— *in and for the county of* ——— *and then and there give ſuch evidence as he knoweth, againſt* ——— *concerning his felonious taking and carrying away* ——— *the property of* ——— *and do not depart thence without leave of the ſaid court, then this recognizance to be void.*

Subpœna to give evidence, in caſe where the king is not party.

GEORGE *the third* ——— *To* A. W. B. W. *and* C. W. *of* ——— *yeomen, greeting. We command you, and every of you, that all buſineſs being laid aſide, and all excuſes ceaſing, you do in your proper perſons appear before our juſtices aſſigned to keep our peace in the county of* ——— *and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in our ſaid county committed, at the ſeſſion of the peace to be holden at* ——— *in and for the ſaid county, on* ——— *the* ——— *day of* ——— *now next enſuing, at the hour of ten in the forenoon of the ſame day, to teſtify all and ſingular*

thoſe

those things which you, or any of you, shall know, in a certain appeal now depending between the churchwardens and overseers of the poor of the parish of ——— appellants, and the churchwardens and overseers of the poor of the parish of ——— removants, touching and concerning the removal of A. P. *from the said parish of ———* [Or, in case where the king is a party, ——— *to testify the truth and give evidence on our behalf, against* A. O. *in a case of trespass and assault*] *And this you and every of you are in no wise to omit, under the penalty of* 10 l. *for you and every of you. Witness* J. P. *esquire, the —— day of ———.*

Note; There may be four witnesses put in one *subpœna*.

A *subpœna* ticket for a witness.

MR. A. W. *By virtue of a writ of* subpœna, *to you and others directed, and herewith shewn unto you, you are required personally to be and appear at the next general quarter sessions of the peace to be holden at ——— in and for the county of ——— to testify the truth according to your knowledge in a certain appeal now depending, between the churchwardens and overseers of the poor of the parish of ——— appellants, and the churchwardens and overseers of the poor of the parish of ——— removants, concerning the removal of* A. P. *from the said parish of ——— to the said parish of ——— on the part of the said appellants: And herein you are not to fail, on pain of* 10 l. *Dated the —— day of ——— in the ——— year ———.*

Sewers.

BY the 23 *H.* 8. *c.* 5. Commissions of sewers shall be issued, in all parts of the realm, where need shall require.

And by the 13 *El. c.* 9. For one year after the expiration of a commission of sewers, the justices of the peace, or six of them, (2 *Q.*) may execute the powers of the said commission, unless a new commission shall be issued in the mean time.

But,

But as the power and authority of these commissioners of sewers is not general enough to fall in with the design of this book, I shall chuse to refer those whom it may particularly concern, to the statutes at large which treat of this title; namely,

23 *H.* 8. *c.* 5.
25 *H.* 8. *c.* 10.
3 & 4 *Ed.* 6. *c.* 8.
7 *An.* *c.* 10.

Besides which general acts, there are others which concern the cities of *London* and *Westminster* only, and other places within the bills of mortality; to wit,

3 *J.* *c.* 14.
19 *C.* 2. *c.* 3. *f.* 20.
22 & 23 *C.* 2. *c.* 17.
2 *W.* *sess.* 2. *c.* 8.
8 & 9 *W.* *c.* 37.

Sheep.

None shall have above 2000 sheep.

1. BY the 25 *H.* 8. *c.* 13. For the preventing many farms being accumulated into few hands, and for the encouragement of tillage, it is enacted, that no person shall have above 2000 sheep at one time, at six score to the hundred, except it be upon his own inheritance only, and except what are necessary for his household; on pain of forfeiting 3 *s.* 4 *d.* for every sheep above that number, half to the king, and half to him that will sue.

And if any person shall happen to have more, by reason of being executor or administrator, he shall sell off within a year, till he have but 2000.

But sheep bequeathed to a child within age, shall not be reckoned in the number.

And lambs are not to be reckoned sheep, till the second *Midsummer* after they are lambed.

And the justices of the peace may enquire of this offence by a jury, or by information.

2. And

2. And for the same reason, no person shall take above two farms with houses thereon; nor shall any person have two, except he dwell in the parish where they both are; on pain of 3 *s.* 4 *d.* a week in like manner. *id.* None shall have above two farms.

3. By the 8 *El. c.* 3. No person shall send or carry over sea, or receive into any ship for that purpose, any sheep alive; on pain for the first offence, of forfeiting all his goods, half to the king, and half to him that will sue, and being imprisoned for a year; and at the year's end in some open market town, in the fulness of the market, on the market day, he shall have his left hand cut off, and nailed up in the openest place of the market; And for the second offence, shall be adjudged a felon, and shall suffer death as in cases of felony; But not to work corruption of blood. And the justices of the peace may enquire of, hear and determine the same. Carrying sheep over sea.

But the offender may have his clergy, as well in the case of the cutting off his hand, as in the case of felony. 3 *Inst.* 104.

And by the 12 *C.* 2. *c.* 32. No person shall export, or lay on board with intent to export any sheep, except wether sheep for the ship's use only; on pain of forfeiting the same, and for every sheep 20 *s.* half to the king, and half to him that shall sue, at the sessions or elsewhere. And the owner of the ship, knowing the offence, shall forfeit his interest in the ship and furniture. And the master and mariners assisting, shall forfeit in like manner, all their goods and chattels, and be imprisoned three months. And any merchant or other person offending herein, shall be disabled to require any debt or account from any factor or other. And the offender may be tried in the county from whence they were exported, or where he shall be apprehended. Prosecution to be in one year. And if the ship belongs to an alien it shall be forfeited to the king.

4. If any person shall in the night time maliciously and willingly kill any sheep; he shall be guilty of felony: but to avoid judgment of death, he may make his election to be transported for seven years. And three justices (1 *Q.*) may hear and determine the same. 22 & 23 *C.* 2. *s.* 7. Killing sheep in the night.

5. If any person shall in the night time maliciously and willingly maim, wound, or otherwise hurt any sheep, whereby the same is not killed; he shall forfeit to the party grieved treble damages, by action of trespass or on the case. 22 & 23 *C.* 2. *c.* 7. Hurting sheep in the night.

Sheep ſtealing or killing, 10 l. reward.

6. If any perſon ſhall feloniouſly drive away, or in any other manner feloniouſly ſteal any ſheep or lamb; or ſhall wilfully kill any ſheep or lamb, with a felonious intent to ſteal the carcaſe or any part thereof; or ſhall aſſiſt or aid in committing any the ſaid offences; he ſhall be guilty of felony without benefit of clergy. 14 *G.* 2. *c.* 6. *ſ.* 1. 15 *G.* 2. *c.* 34.

And every perſon, who ſhall apprehend and proſecute to conviction any ſuch offender, ſhall have a reward of 10 *l.* In order to which, he ſhall have a certificate ſigned by the judge, before the end of the aſſizes, certifying ſuch conviction, and where the offence was committed, and that the offender was apprehended and proſecuted by the perſon claiming the reward; and if more than one claim the reward, he ſhall therein appoint what ſhare ſhall be paid to each claimant: Which certificate being tendered to the ſheriff, he ſhall pay the ſame within a month, without deduction, on pain of forfeiting double, with treble coſts: The ſame to be allowed on his accounts, or to be repaid him out of the treaſury. 14 *G.* 2. *c.* 6. *ſ.* 2, 3.

Sheriff.

Sheriff, what.

1. SHERIFF *(Shireve)* in *Saxon* is *ſcirgerefa*, from *ſciran*, to *ſhare* or divide, for that the whole realm is parted and divided into *ſhires*; and *gerefa*, the *comes*, earl, or governor, in the *Belgick* called *graef* or *grave*. The word *comes*, or *count*, came firſt into *Europe* out of the eaſtern countries, probably from the Hebrew *cône* or *cûne*, which denoteth ſtrength, firmneſs, or ſtability; and the word *county*, in Latin *comitatus*, ſeemeth to be nothing elſe but the diviſion or allotment over which the *comes* or *count* had juriſdiction. And when the counts or earls left the cuſtody of the counties, then was the cuſtody thereof committed to the *viſcounts*, or *vicecomites* (which is the *Latin* name for the ſheriffs); ſo called, becauſe they ſupply the place of the *comes* or earl. The *earl* was otherwiſe called by the Saxons *eorl*, *ealdor*, *ealdorman* (elder, or alderman), becauſe they were uſually men of age and experience; by a like derivation as that of *ſenators* among the *Romans*.

2. By four several statutes it is enacted, that none shall be sheriff, except he have sufficient land within the shire, to answer the king and his people. 9 *Ed.* 2. *st.* 2. 4 *Ed.* 3. *c.* 9. 5 *Ed.* 3. *c.* 4. 13 & 14 *C.* 2. *c.* 21. Who shall be sheriff.

3. At the common law, the sheriff was chosen by the county; but now by the statute of the 14 *Ed.* 3. *c.* 7. he shall be appointed yearly on the morrow of *All Souls*, at the exchequer, by the chancellor, treasurer, and chief baron, taking to them the chief justices. How chosen.

Except in *London*, and where the office is a man's freehold or inheritance. 23 *H.* 6. *c.* 8.

4. The sheriff (except in *Wales* and *Chester*) at the entering upon his office shall take the following oath (to be administred in pursuance of a writ of *dedimus potestatem.*) His oath of office.

I A. B. *do swear, that I will well and truly serve the king's majesty in the office of sheriff in the county of* ——— *and promote his majesty's profit in all things that belong to my office, as far as I legally can or may; I will truly preserve the king's rights, and all that belongeth to the crown; I will not assent to decrease, lessen, or conceal the king's right, or the rights of his franchises; And whensoever I shall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in any other matter or thing, I will do my utmost to make them be restored to the crown again; and if I may not do it myself, I will certify and inform the king thereof, or some of his judges; I will not respite or delay to levy the king's debts, for any gift, promise, reward, or favour, where I may raise the same without great grievance to the debtors; I will do right, as well to poor as to rich, in all things belonging to my office; I will do no wrong to any man, for any gift, reward, or promise, nor for favour or hatred; I will disturb no man's right, and will truly and faithfully acquit at the exchequer, all those of whom I shall receive any debts or duties belonging to the crown; I will take nothing whereby the king may lose, or whereby his right may be disturbed, injured, or delayed; I will truly return, and truly serve all the king's writs, according to the best of my skill and knowledge; I will take no bailiffs into my service, but such as I will answer for, and will cause each of them to take such oaths as I do, in what belongeth to their business and occupation; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estate and circumstances, and make due panels of persons able and sufficient, and not suspected, or procured, as is appointed by the statutes of this realm: I have not sold or let to farm, nor contracted for, nor*

have I granted or promised for reward or benefit, nor will I sell or let to farm, nor contract for, or grant for reward or benefit, by myself or any other person for me, or for my use, directly or indirectly, my sheriffwick, or any bailiwick thereof, or any office belonging thereunto, or the profits of the same, to any person or persons whatsoever; I will truly and diligently execute the good laws and statutes of this realm; and in all things well and truly behave myself in my office, for the honour of the king, and the good of his subjects, and discharge the same according to the best of my skill and power: So help me God. 3 G. c. 15. s. 18, 19.

Sheriff selling inferior offices.

5. By the 4 *H.* 4. *c.* 5. The sheriff in person shall continue within his bailiwick, and shall not let it to farm.

And by the 3 *G.* *c.* 15. *s.* 10. None shall buy, sell, let, or take to farm the office of under-sheriff, gaoler, bailiff, or other office pertaining to the office of high sheriff; on pain of 500 *l.* half to the king, and half to him that shall sue (in two years.)

Sheriff's officers not to be attornies, or jurors.

6. By the 1 *H.* 5. *c.* 4. Sheriff's officers shall not be attornies.

And the sheriff shall return none of his officers upon inquests: on pain of 40 *l.* half to the king, and half to him that shall sue, in the sessions, or elsewhere. 23 *H.* 6. *c.* 10.

Appointment of the under-sheriff.

7. The under-sheriff shall be appointed by the high sheriff, because he shall answer for him; and he shall take the like oath as the high sheriff, *mutatis mutandis.* 3 G. c. 15. s. 19.

Appointment of bailiffs.

8. The bailiffs also shall be appointed by him for the like reason; and every bailiff, when he gives security upon entring into his office, shall make it part of the condition of such security, that he will deliver a copy of the clauses in the act of the 32 *G.* 2. *c.* 28. concerning the carrying of prisoners for debt to alehouses, which is inserted more at large in title Gaoler.

And such bailiff, or other person returning juries, or intermeddling with processes, shall take the following oath of office, before a judge of assize, or the *custos rotulorum*, or two justices of the peace (1 *L.*)

I A. B. *shall not use or exercise the office of bailiff corruptly, during the time that I shall remain therein, neither shall or will accept, receive, or take, by any colour, means, or device whatsoever, or consent to the taking of any manner of fee or reward of any person or persons, for the impanelling or returning of any inquest, jury, or tales, in any court of record, for the king, or*

or betwixt party and party, above 2 s. *or the value thereof, or such fees as are allowed and appointed for the same by the laws and statutes of this realm, but will according to my power, truly and indifferently, with convenient speed, impanel all jurors, and return all such writ or writs touching the same, as shall appertain to be done by my duty or office, during the time that I shall remain in the said office: So help me God.* 27 El. c. 12. s. 2.

And persons acting before they have taken the said oath, shall forfeit 40 *l.* half to the king, and half to him that shall sue, in the sessions, or other court of record. *id. s.* 4, 6.

And if they commit any act contrary to their said oath, they shall forfeit (in like manner) to the party grieved his treble damages. *id. s.* 5.

And the sheriff's bailiffs shall not be in the same office in three years after. 1 *H.* 5. *c.* 4. Except in *London*, *Middlesex*, *Durham*, *Westmorland*, and towns being counties of themselves. 3 *G. c.* 15. *s.* 21.

9. The sheriff hath a jurisdiction both in criminal and civil cases; and for this purpose he hath two courts, his *tourn* for criminal causes, which is therefore the king's court; the other is his *county court* for civil causes, and this is the court of the sheriff himself. 3 *Salk.* 322. The sheriff's two courts; the tourn, and county court.

10. The new sheriff being appointed and sworn, he ought at or before the next county court, to deliver a writ of discharge to the old sheriff, who is to set over all the prisoners in the gaol severally by their names (together with all his writs), precisely, by view and indenture between the two sheriffs; wherein must be comprehended all the actions which the old sheriff hath against every prisoner, though the executions are of record. And till the delivery of the prisoners to the new sheriff, they remain in the custody of the old sheriff, notwithstanding the letters patents of appointment, the writ of discharge, and the writ of delivery. Neither is the new sheriff obliged to receive the prisoners, but at the gaol only. But the office of the old sheriff ceases, when the writ of discharge cometh to him. *Wood, b.* 1. *c.* 7. Sheriff's receiving the accounts of his predecessor.

And by the 20 *G.* 2. *c.* 37. The old sheriff shall turn over to his successor, by indenture and schedule, all such writs and process as shall remain unexecuted; and the new sheriff shall execute and return the same.

Sheriff how far amenable to the juſtices of the peace,

11. The ſheriff having a juſtice of the peace his warrant directed to him, ſhall execute the ſame; but he need not go in perſon to execute it, but may authorize another to do it. 2 *Haw.* 86.

And it is no excuſe to the ſheriff to return that he could not execute a precept becauſe of reſiſtance; for he may take with him the power of the county. 13 *Ed.* 1. *ſt.* 1. *c.* 39.

Alſo the ſheriff, on ſummons, is bound to attend the ſeſſions of the peace, there to return his precepts, to take the charge of the priſoners, to receive fines for the king, and the like. 2 *Haw.* 41.

And it ſeems clear from the general reaſon of the law, which gives all courts of record a kind of diſcretionary power over all abuſes by their own officers, that the ſheriff is puniſhable by the juſtices in ſeſſions, for defaults in executing their writs and precepts. 2 *Haw.* 142, 143.

Sheriff a conſervator of the peace,

12. Every ſheriff is a principal conſervator of the peace, by the common law, and may *ex officio* award proceſs of the peace, and take ſureties for it; and it ſeems to be the better opinion, that the ſecurity ſo taken by him is by the common law looked on as a recognizance or matter of record, and not as a common obligation. 2 *Haw.* 33.

But no ſheriff ſhall exerciſe the office of a juſtice of the peace, in any county wherein he is ſheriff; and in ſuch caſe, his acts as a juſtice ſhall be void. 1 *Mar. ſeſſ.* 2. *c.* 8.

Sheriff to have the keeping of gaols.

13. By the 14 *Ed.* 3. *c.* 10. and 19 *H.* 7. *c.* 10. The ſheriff ſhall have the keeping of gaols.

And in all *civil* cauſes, as in caſes of impriſonment for debt, the ſheriff or gaoler (at the election of the party) ſhall be anſwerable for eſcapes ſuffered by the gaoler; but if the gaoler ſuffer a *felon* voluntarily to eſcape, this inaſmuch as it reacheth to life, is felony only in the gaoler, but the ſheriff may be indicted, fined, and impriſoned. 1 *H. H.* 597.

Sheriff anſwerable for money levied by him.

14. Where the ſheriff levies money on a *fieri facias*, the plaintiff may have an action of debt againſt him for the money, becauſe it was received by him to the plaintiff's uſe, and the defendant is diſcharged of it; and it lies againſt his executors if he die. 3 *Salk.* 323.

Paſſing his accounts.

15. The manner of paſſing his accounts is directed at large by the ſtatutes of the 3 *G.* *c.* 15 & 16. which being foreign to our purpoſe, are not here inſerted.

16. But

16. But after the sheriff hath paid the rewards for apprehending highwaymen, housebreakers, and such like, he shall not be obliged to tarry until the passing of his accounts for the repayment thereof, but he may immediately apply to the commissioners of the treasury, who shall upon inspecting the certificate of the conviction, and the receipts of the persons to whom the rewards were paid, forthwith repay the same to the sheriff without fee. 3 *G.* *c.* 15. *s.* 4. Paying rewards for convicting offenders.

17. No sheriff shall continue in his office above one year, 14 *Ed.* 3. *c.* 7. 28 *Ed.* 3. *c.* 7. Except in *London*, *Middlesex*, and towns being counties of themselves, and where the office is a man's freehold, or inheritance. 23 *H.* 6. *c.* 8 3 *G.* *c.* 15. *s.* 21. How long he shall continue in office.

And by the 1 *R.* 2. *c.* 11. None that hath been sheriff shall be so again within three years, if there be other sufficient.

But by the 17 *Ed.* 4. *c.* 6 The sheriff may hold his office after the year, during *Michaelmas* and *Hilary* terms, if not before lawfully discharged.

18. If the sheriff shall die before his office shall be expir[illegible], the under-sheriff shall execute the same in the deceased sheriff's name, till a new sheriff be sworn, and be answerable for the execution thereof, as the deceased sheriff would have been. 3 *G.* *c.* 15. *s.* 8. Sheriff dying before the expiration of his office.

Ships.

1. IF any owner of, or captain, master, mariner, or other officer belonging to any ship, shall wilfully cast away, burn, or otherwise destroy the ship of which he is owner, or unto which he belongeth, or in any wise direct or procure the same to be done; with intent to prejudice any person that shall underwrite any policy of insurance thereon, or any merchant that shall load goods thereon; he shall be guilty of felony without benefit of clergy. 11 *G.* *c.* 29. *s.* 6. Wilfully destroying.

And if it is committed within the body of a county, it shall be tried there; if on the high seas, it shall be tried as in cases of piracy. *s.* 7.

And by the 20 *G.* 2. *c.* 52. The said offence is excepted out of the general pardon.

Plundering or deſtroying a ſhip in diſtreſs.

2. By the 12 *An. ſt.* 2. *c.* 18. and 26 *G.* 2. *c.* 19. If any perſon ſhall plunder any ſhip in diſtreſs, or wilfully do any thing tending to the immediate loſs of ſuch ſhip; he ſhall be guilty of felony without benefit of clergy.

Stealing goods from on ſhip-board.

3. All perſons who ſhall feloniouſly ſteal any goods of the value of 40 *s.* in any ſhip, boat, or veſſel, on any navigable river, or in any port of entry or diſcharge, or from any wharf or key, or ſhall be preſent and aſſiſting therein; he ſhall be guilty of felony without benefit of clergy. 24 *G.* 2. *c.* 45.

Shoemakers.

THE ſhoemakers duty in the true making of ſhoes, is inſerted in the title Leather.

Differences between ſhoemakers and their workmen, are treated of under the title Servants.

Silks.

THE *duties* on ſilks and calicoes, being under the ſame regulations with the duties on printed linens, the law concerning them is inſerted under the article of *linen cloth* in the title Exciſe.

Concerning ſervants and other workmen in the ſilken manufactures, ſee title Servants.

Silk thrower.

1. No perſon ſhall exerciſe the trade of a ſilk thrower, unleſs he hath ſerved 7 years apprenticeſhip; on pain of 40 *s.* a month, half to the king, and half to him that ſhall ſue in any court of record, or at the aſſizes, or quarter ſeſſions of the peace. 13 & 14 *C.* 2. *c.* 15. *ſ.* 2.

Alamodes and luteſtrings.

2. By the 9 & 10 *W.* *c.* 43. No foreign ſilks, called alamodes or luteſtrings, ſhall be imported, but in the port of *London*, on notice firſt given to the commiſſioners of the cuſtoms, and licence had from them. *ſ.* 1.

And if they be imported elſewhere, or without ſuch notice and licence, and the duties paid, they ſhall be forfeited, or the value thereof, and be ſold and exported again;

again; and the offender ſo importing, and alſo the receiver, and perſon offering to ſell the ſame, ſhall forfeit 500 l. *ſ.* 3.

And the commiſſioners ſhall cauſe them to be marked and ſealed. *ſ.* 2.

And if any perſon ſhall counterfeit the cuſtom-houſe ſeal, or ſeal of the luteſtring company; he ſhall forfeit 500 *l.* and be ſet in the pillory two hours. *ſ.* 5.

And any perſon who ſhall buy or ſell or have in his cuſtody any alamodes or luteſtrings, ſealed or marked with a counterfeit ſeal or mark, ſhall forfeit the ſame and 500 l. *ſ.* 5.

And any perſon authorized by writ of aſſiſtance under the ſeal of the exchequer, or with a conſtable or other publick officer, inhabiting near the place, with a warrant from a juſtice of the peace, and in the day time, may enter any houſe, ſhop, cellar, warehouſe, or other place, to ſearch for and ſeize any alamodes or luteſtrings imported contrary to this act, or not ſealed or marked, or marked with a counterfeit mark or ſeal, and in caſe of reſiſtance may break open doors, cheſts, trunks, and other package; and every juſtice ſhall grant ſuch warrant to any credible perſon, making oath that he hath reaſon to ſuſpect or believe, that there are ſome of the ſaid ſilks ſo fraudulently imported or not ſealed and marked, or ſealed or marked with a counterfeit ſeal or mark in the place or places where he intends to ſearch. *ſ.* 5.

And all officers belonging to the cuſtoms, ſheriffs, mayors, bailiffs, conſtables, and other officers, ſhall be aiding in the execution hereof. *ſ.* 6.

(But none but cuſtomhouſe officers, or perſons deputed by the luteſtring company, and having writs of aſſiſtance from the exchequer, ſhall ſeize luteſtrings or alamodes within the bills of mortality. 5 *An.* *c.* 20. *ſ.* 3.)

The ſaid penalties ſhall be two thirds to the king, and one third to him that ſhall ſeize or ſue in any court of record. *ſ.* 9.

3. By the 3 *G.* 3. *c.* 21. & 5 *G.* 3. *c.* 48. If any perſon ſhall import any ribbands, laces, or girdles, not made in Great Britain, whether the ſame ſhall be wrought of ſilk alone, or mixed with other materials; the ſame ſhall be forfeited, and may be ſeized by any officer of the cuſtoms, in whatever importers, venders, or retailers hands they may be found; and the importer, and every perſon aſſiſting therein, and the venders and retailers, in whoſe cuſtody they ſhall be found, or who ſhall ſell or expoſe Ribbands and laces.

the ſame to ſale, or conceal with intent to prevent the forfeiture, ſhall forfeit reſpectively 200 *l.* with coſts. Half the ſaid penalties to be to the king, and half to the officer who ſhall inform and proſecute.

But if any officer or officers of the cuſtoms ſhall neglect or refuſe, for one month after condemnation, to proſecute to effect any perſon for any of the ſaid pecuniary forfeitures; any other perſon may ſue for and recover the ſame: half thereof to go to the king in like manner, and half to him who ſhall ſue.

And when the goods ſeized (being out of the limits of the bills of mortality) ſhall not exceed the value of 20 *l.*; two juſtices, on information before them that ſuch goods were ſeized as unduly imported, may hear and determine the ſame, and proceed to condemnation or diſcharge.

And after ſeizure, until condemnation or diſcharge, the ſaid goods ſhall be depoſited in one of the king's warehouſes, if the ſeizure be within the bills of mortality; elſewhere, in the hands of the chief magiſtrate or conſtable: and the ſame ſhall be free to inſpection, with leave of the court, judge, or juſtices, before whom the proſecution ſhall be.

And after condemnation, the ſaid goods ſhall be publickly ſold by the candle for exportation; half of the produce by ſuch ſale to be to the king, and half to the officer who ſhall ſeize and ſecure the ſame; and the ſame goods ſhall not be delivered out of the warehouſe, till ſecurity ſhall be given for exportation, and that the ſame ſhall not be landed again in any part of his majeſty's dominions.

And on information in writing upon oath, before two juſtices, that there is good ground and reaſon to ſuſpect, that ſuch ribbands, laces, or girdles have been imported, and are concealed by, or in the poſſeſſion or cuſtody of, any retailer or ſeller of ribbands, laces, or girdles; they may iſſue their warrant to the conſtable or other peace officer, impowering him to ſearch, in the day time, the houſes, outhouſes, warehouſes, ſhops, cellars, rooms, and other places of ſuch perſons, and (if the ſame ſhall be found) to ſeize and carry away the ſame, and diſpoſe thereof as is aforeſaid.

And if any doubt ſhall ariſe where the ſaid goods were manufactured; the proof ſhall lie upon ſuch perſon in whoſe cuſtody they were found, and not upon the proſecutor: and if no proof ſhall be given that they were manufactured in Great Britain; the ſame ſhall, without any

further proceeding, be taken to have been manufactured out of Great Britain.

Provided, that if any perſon, in whoſe poſſeſſion ſuch goods ſhall be ſeized (ſuch perſon not importing or concealing the ſame), ſhall diſcover upon oath before one juſtice the perſon who ſold the ſame to him, ſo as he may be convicted as the ſeller thereof; ſuch perſon ſhall be diſcharged of all penalties and forfeitures inflicted by this act on venders or retailers having ſuch goods in their poſſeſſion.

Provided alſo, that nothing herein ſhall extend to ſubject any perſon who ſhall wear or make uſe of ſuch ribbands, laces, or girdles, as part of their apparel or dreſs only, to any forfeiture or pecuniary penalty, or to any proof that they were manufactured in Great Britain.

Stockings, mitts, and gloves.

4. By the 5 *G.* 3. *c.* 48. If any foreign manufactured ſilk ſtockings, ſilk mitts, or ſilk gloves, ſhall be imported into this kingdom, or any part of the Britiſh dominions; the ſame ſhall be forfeited, and liable to be ſearched for and ſeized as other uncuſtomed goods: and every perſon who ſhall import the ſame, or be aſſiſting therein; and the venders and retailers in whoſe cuſtody they ſhall be found, or who ſhall ſell or expoſe the ſame to ſale, or conceal with intent to prevent the forfeiture; ſhall, over and above the forfeiture of the goods, forfeit 200 *l.* with coſts; half to the king, and half to the officer who ſhall inform and proſecute.

And when the goods ſeized (being out of the limits of the bills of mortality) ſhall not exceed the value of 20 *l.*; two juſtices may proceed to the condemnation thereof: And the proceedings in all other reſpects, ſhall be in like manner as in the caſe of ribbands and laces abovementioned.

Skins. See **Leather.**

Slander.

I Do not find it any where clearly ſettled, how far ſlander, or ſcandalous words are cognizable before juſtices of the peace, by reaſon of the different circumſtances

ſtances in matters of ſo indeterminate a nature; for the ſame words, when ſpoken of different perſons, and even of the ſame perſon with a different emphaſis and manner of delivering them, may receive a very different interpretation.

In general, it ſeemeth that words which directly tend to a breach of the peace, as if one man challenge another, are cognizable before juſtices of the peace, for which the party may be bound to the good behaviour, and even indicted. 2 *Salk.* 698. 1 *Keb.* 931.

But if they do not tend directly to a breach of the king's peace, but are matters only of private ſlander between party and party, which no way affect the publick adminiſtration of juſtice, as in caſe where the common people are wont to call one another knaves, and rogues, and whores, and thieves; I do not find it aſſerted by any good authority, that juſtices of the peace have any juriſdiction at all in ſuch matters; but the proper remedy ſeems to be in one of theſe two ways, either by a proſecution in the ſpiritual court, or by an action upon the caſe at the common law.

In the former caſe, it is provided by the ſtatute of *Circumſpecte agatis*, 13 *Ed.* 1. and alſo by the ſtatute of the 9 *Ed.* 2. *c.* 4. that in matters of defamation, no prohibition ſhall lie to the ſpiritual court from the courts temporal: But Biſhop *Gibſon* ſays, that in order to ſecure cauſes of defamation in the ſpiritual court, againſt prohibitions, they muſt have theſe two incidents; 1. That they concern matters merely ſpiritual. 2. That they concern mere ſpiritual matter only, and not mixt with any matter determinable at common law. And the proſecution in this court muſt be only for the puniſhment of ſin, and the welfare of the ſoul; for the party cannot ſue there for amends or damages. *Gibſ.* 1070.

But the remedy in ſuch caſe (as hath been ſaid) muſt be by action in the courts temporal, if the words will bear it: But it ſeems very difficult, for the reaſons abovementioned, to define what words are actionable, and what not. The moſt general rule ſeems to be, that words are then moſt properly actionable, when they are ſpoken of a perſon in relation to his profeſſion or calling, and not when ſpoken at large without any ſuch particular application.

And by the 21 *J.* *c.* 16. Actions upon the caſe for ſlanderous words, ſhall be brought within two years after the words ſpoken, and not after: and if the jury find the

damages

damages under 40*s.* the plaintiff ſhall have no more coſts than damages.

But if the words ſpoken are not in themſelves actionable, and damages are given to the plaintiff for a conſequential loſs only, there the plaintiff may have larger coſts. And the diſtinction is this: The ſtatute expreſsly mentions actions of *ſlander*; but if the words are ſuch, as give the party an action in reſpect of the ſpecial damage reſulting therefrom, and are not in themſelves actionable, it is not properly an action of ſlander, but a ſpecial action on the caſe; and therefore is not within this ſtatute. *E.* 12 *G.* 2. *Baſs* and *Hickford.* Andr. 375.

M. 17 *G.* 2. *Underwood* and *Parks.* In an action for words, the defendant pleaded *not guilty*, and offered to prove the words to be true, in mitigation of damages: But *Lee* Ch. J. refuſed to admit the ſame, ſaying, that at a meeting of all the judges upon a caſe that aroſe in the common pleas, a large majority of them had determined, not to allow it for the future, but that it ſhall be *pleaded*, whereby the plaintiff might be prepared to defend himſelf, as well as to prove the ſpeaking of the words. *Str.* 1200.

Finally, there is one ſpecies of ſlander, of which the law takes a more eſpecial notice; and that is, when it relates to the great men of the realm: Concerning whom, it is enacted by the 3 Ed. 1. c. 34. 2 R. 2. ſt. 1. c. 5. and 12 R. 2. c. 11. *that none ſhall tell or publiſh any falſe news or tales, whereby diſcord, or occaſion of diſcord or ſlander may grow, between the king and his people, or the great men of the realm; and that none ſhall deviſe, ſpeak, or tell any falſe news or lies, of any prelates, lords, judges, or other great men of the realm, whereof any diſcord or ſlander may ariſe; on pain of impriſonment, until he hath brought into court the firſt author of the tale; and if he cannot find the author, he ſhall be puniſhed by advice of the council.*

Publiſh any falſe news or tales] But this extends only to extrajudicial ſlanders; for if a man charge them in due courſe of law, although the charge be falſe, yet there will lie no action *de ſcandalis magnatum*, neither at common law, nor by theſe ſtatutes. 2 *Inſt.* 228.

Smugglers. See Exciſe.

Snares. See Game.

Snuff. See Tobacco.

Soap. See Exciſe.

Sodomy. See Buggery.

Soldiers.

FOR ſoldiers inliſting into foreign ſervice, ſee title Foreign Service.

THE antient military order was, when the king was to be ſerved with ſoldiers for his war, a knight or eſquire of the county, that had revenues, farmers, and tenants, would covenant with the king by indenture inrolled in the exchequer, to ſerve the king for ſuch a term with ſo many men ſpecially named in a liſt, in his war. 1 *Inſt.* 71.

And in conſequence hereof, there are many regulations by divers ſtatutes concerning the ſame; which being now out of uſe, it is thought ſufficient juſt to mention them; to wit,

18 *H.* 6. *c.* 19.
7 *H.* 7. *c.* 1.
3 *H.* 8. *c.* 5.
2 & 3 *Ed.* 6. *c.* 2.
4 & 5 *P.* & *M.* *c.* 3.

But the preſent regulations concerning the ſoldiery (the militia excepted) are chiefly contained in the yearly acts againſt mutiny and deſertion; the ſubſtance whereof, ſo far as juſtices of the peace and other civil officers are concerned, is contained in the following ſections.

I. Articles of war.
II. Inliſting ſoldiers.
III. Muſter.
IV. Carriages.
V. Billetting.
VI. To remove in time of elections.
VII. Having wives or children, to be examined as to their ſettlement.
VIII. Deſtroying the game.
IX. Sued for debt.

X. Guilty

X. Guilty of crimes.
XI. Pay.
XII. Deſerting.
XIII. Setting up trades after their diſcharge.
XIV. Maintenance after their diſcharge.
XV. Probate of their wills.

I. Articles of war.

The king may form articles of war for better government of the forces, and conſtitute courts martial, with power to try any crime by ſuch articles of war. 5 *G.* 3. *c.* 7. *ſ.* 53.

But no perſon ſhall be adjudged to ſuffer any puniſhment extending to life or limb, by the ſaid articles, except for crimes expreſſed to be ſo puniſhable by this act. *ſ.* 54.

II. Inliſting ſoldiers.

When any perſon ſhall be inliſted, he ſhall in four days, but not ſooner than 24 hours, be carried before the next juſtice, or chief magiſtrate of a town corporate (not being an officer in the army,) and before him ſhall be at liberty to declare his diſſent to ſuch inliſting; and on ſuch declaration, and returning the inliſting money, and paying 20 *s.* for the charges expended on him, he ſhall be forthwith diſcharged, in preſence of ſuch magiſtrate: But if he ſhall refuſe or neglect in 24 hours to return and pay ſuch money as aforeſaid, he ſhall be deemed to be inliſted, as if he had given his aſſent thereto before ſuch magiſtrate. If he declare that he voluntarily inliſted himſelf, the juſtice or chief magiſtrate ſhall forthwith certify under his hand, that ſuch perſon is duly inliſted, ſetting forth the place of his birth, age and calling (if known), and that the ſecond and ſixth ſections of the articles of war againſt mutiny and deſertion were read to him, and that he has taken the oath mentioned in the ſaid articles of war: And if any perſon ſo certified as duly inliſted ſhall refuſe to take the ſaid oath of fidelity before ſuch magiſtrate, the officer from whom he hath received ſuch money, may detain and confine him till he ſhall take it: And every military officer that ſhall act contrary hereto, or offend herein, ſhall incur the like penalty as is by this act inflicted for making a

falſe

falſe muſter, to be recovered as any penalties by this act are recoverable. *ſ.* 69.

Which ſaid ſecond and ſixth ſections of the articles of war are theſe:

(SECT. II.)

Art. 1. Whatſoever officer or ſoldier ſhall preſume to uſe traiterous or diſreſpectful words againſt the ſacred perſon of his majeſty, his royal highneſs the prince of *Wales*, or any of the royal family; if a commiſſioned officer, he ſhall be caſhiered; if a non-commiſſioned officer or ſoldier, he ſhall ſuffer ſuch puniſhment as ſhall be inflicted upon him by the ſentence of a court martial.

Art. 2. Any officer or ſoldier who ſhall behave himſelf with contempt or diſreſpect towards the general, or other commander in chief of our forces, or ſhall ſpeak words tending to his hurt or diſhonour, ſhall be puniſhed according to the nature of his offence, by the judgment of a court martial.

Art. 3. Any officer or ſoldier who ſhall begin, excite, cauſe or join in any mutiny or ſedition, in the troop, company, or regiment, to which he belongs, or in any other troop or company in our ſervice, or on any party, poſt, detachment, or guard, on any pretence whatſoever, ſhall ſuffer death, or ſuch other puniſhment as by a court martial ſhall be inflicted.

Art. 4. Any officer, non-commiſſioned officer, or ſoldier, who being preſent at any mutiny or ſedition, does not uſe his utmoſt endeavours to ſuppreſs the ſame, or coming to the knowledge of any mutiny, or intended mutiny, does not without delay give information thereof to his commanding officer, ſhall be puniſhed by a court martial with death, or otherwiſe, according to the nature of the offence.

Art. 5. Any officer or ſoldier who ſhall ſtrike his ſuperior officer, or draw, or offer to draw, or ſhall lift up any weapon, or offer any violence againſt him, being in the execution of his office, on any pretence whatſoever, or ſhall diſobey any lawful command of his ſuperior officer, ſhall ſuffer death, or ſuch other puniſhment as ſhall, according to the nature of his offence, be inflicted upon him by the ſentence of a court martial.

(SECT.

(SECT. VI.)

Art. 1. All officers and ſoldiers, who having received pay, or having been duly inliſted in our ſervice, ſhall be convicted of having deſerted the ſame, ſhall ſuffer death, or ſuch other puniſhment as ſhall by a court martial be inflicted.

Art. 2. Any non-commiſſioned officer or ſoldier, who ſhall, without leave from his commanding officer, abſent himſelf from his troop or company, or from any detachment with which he ſhall be commanded, ſhall, upon being convicted thereof, be puniſhed according to the nature of his offence, at the diſcretion of a court martial.

Art. 3. No non-commiſſioned officer or ſoldier ſhall inliſt himſelf in any other regiment, troop, or company, without a regular diſcharge from the regiment, troop, or company, in which he laſt ſerved, on the penalty of being reputed a deſerter, and ſuffering accordingly. And in caſe any officer ſhall knowingly receive and entertain ſuch non-commiſſioned officer and ſoldier, or ſhall not, after his being diſcovered to be a deſerter, immediately confine him, and give notice thereof to the corps in which he laſt ſerved, he the ſaid officer ſo offending ſhall by a court martial be caſhiered.

Art. 4. Whatſoever officer or ſoldier ſhall be convicted of having adviſed or perſuaded any other officer or ſoldier to deſert our ſervice, ſhall ſuffer ſuch puniſhment as ſhall be inflicted upon him by the ſentence of a court martial.

And the *oath* mentioned in the ſaid articles of war, is as follows:

I ſwear to be true to our ſovereign lord king George, *and to ſerve him honeſtly and faithfully, in defence of his perſon, crown, and dignity, againſt all his enemies or oppoſers whatſoever: And to obſerve and obey his majeſty's orders, and the orders of the generals and officers ſet over me by his majeſty.*

And the juſtice's certificate of the whole may be this:

Weſtmorland. I *Do hereby certify, that* A. S. *of the age of* ——— *years, born at* ——— *in the county of* ——— *ſhoemaker, came this day before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county of* ——— *and declared that on the* ——— *day of* ——— *now laſt paſt, he did voluntarily inliſt himſelf as a private ſoldier to ſerve his ſaid majeſty king* George *the third, in the regiment of foot commanded by* ——— *and that he now freely conſenteth unto the ſame: And thereupon I do hereby alſo certify, that he the ſaid* A. S. *is duly inliſted as aforeſaid; and that the ſecond and ſixth ſections of the articles of war againſt mutiny and deſertion were alſo before me read unto him this day, and that he hath alſo at the ſame time taken before me the oath mentioned in the ſaid articles of war. Given under my hand at* ——— *in the ſaid county of* ——— *the* ——— *day of* ———.

But if any perſon ſhall receive the inliſting money knowing it to be ſuch, and ſhall abſcond, or refuſe to go before ſuch magiſtrate, in order to declare his aſſent or diſſent, he ſhall be deemed to be liſted, and may be proceeded againſt as if he had taken the ſaid oath before ſuch magiſtrate. 5 *G.* 3. *c.* 7. *ſ.* 70.

III. Muſter.

Every commiſſary or muſter maſter, upon any muſter to be made, ſhall give convenient notice thereof to the mayor, or other chief officer, of the place where the ſoldiers are quartered; who ſhall be preſent at every ſuch muſter, and give his utmoſt aſſiſtance for the diſcovering of any falſe muſter: And every muſter maſter neglecting to give ſuch notice, or refuſing the aſſiſtance of ſuch mayor or other officer, ſhall forfeit 50 *l.* and his office. And no muſter roll ſhall be allowed, unleſs ſigned by ſuch mayor or other officer: But if ſuch mayor or officer ſhall not attend, or refuſe to ſign ſuch muſter roll, without giving ſufficient reaſon for ſuch his refuſal; then the commiſſary may proceed to muſter, and ſuch muſter roll ſhall be allowed, though not ſigned as aforeſaid, provided that oath be made before

before a juſtice in 48 hours after ſuch muſter; and the ſaid muſter roll ſhall be then produced, and examined by the ſaid juſtice, who ſhall ſign the ſame, if there appear to be no ſufficient objection to it. *ſ.* 13.

And in *Weſtminſter* and *Southwark*, no muſter ſhall be made, but in preſence of two juſtices (not being officers of the army); unleſs the juſtices, on 48 hours notice to ſix of them, neglect to attend. *ſ.* 34.

And the commiſſary or muſter maſter ſhall make oath (for which no fee ſhall be taken) before the mayor or chief magiſtrate attending the muſter, if ſuch mayor or chief magiſtrate be a juſtice of the peace, or otherwiſe before a juſtice in the form following; I *A. B.* do ſwear, that I ſaw at the time of making the within muſter, ſuch men or horſes as are borne, and not reſpited, on the muſter roll, for which men or horſes a ſigned certificate or certificates are not indorſed on the back of the roll, certifying their being abſent from the muſter, by reaſon of being employed on ſome other duty of the regiment, or by being ſick, in priſon, or furlough, or at graſs, or by a ſigned leave from the colonel or field officer, or officer commanding the regiment, troop, or company.

Which oath the ſaid commiſſary ſhall inſert and ſubſcribe on the back of the muſter roll tranſmitted by him into the office of the commiſſary general of the muſters. *ſ.* 16.

And if any perſon ſhall give a falſe certificate, to excuſe any ſoldier from muſter or other ſervice, on pretence of being employed on ſome other duty of the regiment, or of ſickneſs, being in priſon, or on furlough; he ſhall forfeit 50*l.* and be caſhiered and diſabled to hold any military office. And no certificate ſhall excuſe the abſence of any ſoldier, but for the reaſons abovementioned, or one of them; and the commiſſary ſhall ſet down on the roll, at the time of taking the muſter, the reaſon of ſuch abſence, and by whom certified; and not to ſet down any ſuch excuſe, without view of ſuch certificate. *ſ.* 10.

And every officer that ſhall make any falſe muſter of man or horſe, and every commiſſary, muſter maſter, or other officer, who ſhall wittingly allow or ſign the muſter roll, wherein any ſuch falſe muſter is contained, or ſhall take any reward for muſtering or ſigning muſter rolls, ſhall be caſhiered and diſabled. *ſ.* 11.

And if any perſon ſhall be falſly muſtered; or offer himſelf to be falſly muſtered; on proof thereof by oath of two

witneſſes, before the next juſtice, and on certificate thereof under the hand of the commiſſary, or chief magiſtrate as aforeſaid, he ſhall be committed to the houſe of correction for ten days: And if any perſon ſhall wittingly furniſh a horſe to be muſtered, he ſhall be forfeited to the informer, if he ſhall belong to the perſon furniſhing the ſame; otherwiſe the offender ſhall forfeit to the informer 20 *l.* on oath by two witneſſes, before the next juſtice, by diſtreſs; and if he ſhall have no ſufficient diſtreſs, or ſhall not pay in four days after conviction, he ſhall be committed to the common gaol for three months, or be publickly whipped, at the diſcretion of the juſtice; and the informer if a ſoldier, ſhall be diſcharged, if he demands it. *ſ.* 14.

But fictitious names, allowed by his majeſty's order upon the muſter rolls, for the maintenance of widows of officers who loſt their lives in the late war, or during the late rebellion, ſhall not be conſtrued a falſe muſter. *ſ.* 12.

IV. Carriages.

For proviſion of carriages for the forces in their march, or for their arms, cloaths and accoutrements, any juſtice of the peace, being duly required thereunto, by any order from his majeſty, or the general of his forces, or the maſter general, or lieutenant general of his majeſty's ordnance, ſhall on ſuch order being brought and ſhewn unto him, by the quarter maſter, adjutant, or other officer of the regiment, troop, or company ordered to march, iſſue out his warrant to the conſtables or petty conſtables of the diviſion, liberty, hundred, or precinct from, thro', near, or to which ſuch forces ſhall be ordered to march; requiring them to make ſuch proviſion for carriages, with able men to drive the ſame, as is mentioned in the ſaid warrant; allowing them ſufficient time to do the ſame, that the neighbouring parts may not always bear the burden: And if ſufficient carriages cannot be provided within any ſuch liberty, diviſion, or precinct; then the next juſtice (or juſtices) of the county, riding, or diviſion, ſhall on ſuch order as aforeſaid ſo brought or ſhewn to him, iſſue his warrant to the conſtables or petty conſtables of ſuch next county, riding, diviſion, or precinct, for the purpoſes aforeſaid, to make up ſuch deficiency. *ſ.* 40.

Which

Which warrant may be thus:

Weſtmorland, { To the conſtable of ———.

BY *virtue of an order from* ——— *general of his majeſty's forces, this day brought and ſhewn unto me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, by* ——— *lieutenant in captain* ——— *'s company of his majeſty's regiment of foot, commanded by* ——— *you are hereby required to provide* ——— *ſufficient carriages, with able men to drive the ſame, within your conſtablewick, whereby to remove the arms, cloaths, and accoutrements of the ſaid company on their march from* Shap *to* Kirkby *in* Kendale *in the ſaid county; and with them you are to appear at* Shap *aforeſaid to-morrow preciſely at five of the clock in the morning. Herein fail you not, as you will anſwer the contrary at your peril. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———.

And the officer, who by virtue of the ſaid warrant is to demand the carriages of the conſtable to whom it is directed, ſhall at the ſame time pay down to him in hand for the uſe of the perſons who ſhall provide ſuch carriages and men, the ſum of 1 *s.* for every mile any waggon with five horſes ſhall travel; and 1 *s.* for every mile any wain with ſix oxen, or four oxen with two horſes ſhall travel; and 9 *d.* for every mile any cart with four horſes ſhall travel; and ſo in proportion for leſs carriages: For which the conſtable ſhall give a receipt. *ſ.* 40.

And ſuch conſtable, or petty conſtable, ſhall appoint ſuch perſons having carriages within their reſpective liberties, as they ſhall think proper, to provide and furniſh ſuch carriages and men. *id.*

And if any military officer ſhall force any carriage to travel more than one day's journey; or ſhall not diſcharge the ſame in due time for their return home; or ſhall ſuffer any ſoldier or ſervant (except ſuch as are ſick), or any woman, to ride in ſuch carriage; or ſhall force any conſtable, by threatnings, to provide ſaddle horſes for themſelves or ſervants; or ſhall force horſes from the owners, by themſelves, ſervants, or ſoldiers; he ſhall forfeit 5 *l.* proof thereof being made on oath before two juſtices, who ſhall certify the ſame to the paymaſter general, or other paymaſter of the forces, who ſhall pay the ſame, according to the order of

the ſaid juſtices under their hands and ſeals, who ſhall deduct the ſame out of the officer's pay. *id.*

And no waggon, wain, cart, or carriage, ſhall be obliged to carry above thirty hundred weight. *ſ.* 44.

And if any high or petty conſtable ſhall wilfully neglect or refuſe to execute ſuch warrants for providing carriages; or if any perſon appointed by ſuch conſtable to furniſh any carriage and man, ſhall refuſe or neglect to provide the ſame; or any other perſon ſhall wilfully hinder the execution thereof, he ſhall forfeit not exceeding 40*s.* nor leſs than 20*s.* to the poor of the pariſh where ſuch offence ſhall be committed; the ſame to be heard and determined by two juſtices dwelling in or near the place, who ſhall cauſe the penalty to be levied by diſtreſs. *ſ.* 41.

And whereas the ſums to be paid the conſtables by the officers demanding carriages, are in many caſes not ſufficient to anſwer the charge and expence of providing the ſame, to the great burden of the townſhip, or elſe the perſons performing ſuch carriages are grievouſly oppreſſed; it is enacted, that the treaſurer of the county ſhall without fee pay unto ſuch conſtable all reaſonable ſums by him laid out for carriages, over and above what was or ought to have been paid by the officer requiring ſuch carriages, out of the publick ſtock, according to ſuch rates and orders as the juſtices in ſeſſions ſhall direct, which orders ſhall be made without fee; regard being had to the ſeaſon of the year, and the length and condition of the ways: and if the publick ſtock be not ſufficient, the juſtices in ſeſſions may raiſe money as for gaols and bridges. *ſ.* 42, 43.

That is to ſay, the ſame ſhall be paid out of the general county rate, as directed by the 12 *G.* 2. *c.* 29.

H. 3 *G. K.* againſt *Hunt* and others. The court granted a *mandamus* directed to the juſtice of the peace, to allow the defendants, being conſtables, the extraordinary charges in providing carriages on the late expedition into *Scotland*. Str. 42, 93.

V. Billeting.

By the 31 *C.* 2. *c.* 1. No officer, military or civil, nor any other perſon whatſoever, ſhall preſume to place, quarter or billet any ſoldier, on any ſubject or inhabitant of this realm, of any degree, quality, or profeſſion whatſoever, without his conſent; and every ſuch ſubject or inhabitant may refuſe to ſojourn or quarter any ſoldier, notwithſtanding

ing any command, order, warrant, or billeting whatever. *ſ.* 54.

But by the mutiny act, The conſtables and other chief officers and magiſtrates of cities, towns, villages, and other places, and in their default or abſence, any one juſtice inhabiting in or near ſuch place, and no others, ſhall and may quarter and billet the officers and ſoldiers in inns, livery ſtables, alehouſes, victualling houſes, and the houſes of ſellers of wine by retail to be drank in their own houſes or places thereunto belonging (other than perſons who keep taverns only, being free of the vintners company in *London*), and all houſes of perſons ſelling brandy, ſtrong waters, cyder, or metheglin, by retail, to be drank in houſes, (other than the houſes of diſtillers who keep places of diſtilling brandy and ſtrong waters, and of ſhopkeepers whoſe principal dealing ſhall be more in other goods than in brandy or ſtrong waters, and who do not permit tippling in their houſes) and no other, and in no private houſes whatſoever; nor ſhall any more billets be ordered, than there are effective ſoldiers; and if any conſtable, or ſuch like officer, or magiſtrates as aforeſaid, ſhall preſume to quarter or billet any ſuch officer or ſoldier in any private houſe, without the conſent of the owner or occupier, ſuch owner or occupier ſhall have his remedy at law againſt ſuch magiſtrate or officer for damages; and if any military officer ſhall take upon him to quarter ſoldiers otherwiſe than by this act, or ſhall offer any menace or compulſion, to any mayor, conſtable, or other civil officer before mentioned, tending to deter and diſcourage any of them from doing their duty, he ſhall on conviction before any two of the next juſtices by the oath of two witneſſes, be *ipſo facto* caſhiered and diſabled to hold any military employment; provided the conviction be affirmed at the next ſeſſions, and a certificate thereof be tranſmitted to the judge advocate, who ſhall certify the ſame to the next court martial. And if any perſon ſhall be aggrieved by having more ſoldiers billeted than in proportion to his neighbours, on complaint thereof to one juſtice, or if the perſon ſo billeting them be a juſtice, then on complaint to two juſtices, they may relieve him. *ſ.* 22.

Note; the clauſe above recited, relating to ſhopkeepers, might as well be now omitted out of the act; for that by the 17 *G.* 2. *c.* 17. no ſhopkeepers, as ſuch, are allowed to retail any ſpirituous liquors, but only thoſe who keep taverns, victualling houſes, inns, coffee-houſes, or alehouſes.

But no juſtice, having any military command, ſhall be concerned in quartering ſoldiers under his immediate command; but all things done by him therein ſhall be void. 5 *G.* 3. *c.* 7. *ſ.* 23.

And if any conſtable, or other officer, ſhall neglect his duty in billeting, for the ſpace of two hours, provided ſufficient notice hath been given before, of the arrival of the forces; or ſhall take any reward to excuſe any perſon; or if any perſon liable ſhall refuſe to receive any ſoldiers, or to furniſh them as required by this act; and be thereof convicted, before one juſtice, by confeſſion, or oath of one witneſs, he ſhall forfeit 5 *l.* (or any ſum not exceeding 5 *l.* nor leſs than 40 *s.*) by diſtreſs, by warrant of ſuch juſtice, to be directed to any other conſtable, or to any overſeer of the poor of the pariſh where the offender ſhall dwell, for the uſe of the poor of the ſaid pariſh. *ſ.* 66.

And if any officer ſhall take any money of any perſon, for excuſing the quartering of ſoldiers, he ſhall be caſhiered and incapacitated. *ſ.* 26.

And if any officer, military or civil, ſhall quarter any of the wives, children, men, or maid ſervants of officer or ſoldier, in any houſe againſt the conſent of the owner; if he is an officer of the army, he ſhall on proof made thereof to the commander in chief of the army, or judge advocate, be *ipſo facto* caſhiered; and if a conſtable, or other civil officer, he ſhall forfeit to the party grieved 20 *s.* on proof thereof to the next juſtice, by diſtreſs. *ſ.* 46.

Officers and ſoldiers, billeted as aforeſaid, ſhall be received and furniſhed with diet and ſmall beer, paying for the ſame as hereafter is mentioned, out of their ſubſiſtence money. *ſ.* 24.

But if any perſon ſhall chuſe rather to furniſh them with candles, vinegar, and ſalt, and with either ſmall beer or cyder, not exceeding five pints a day, *gratis*, and allow them the uſe of fire, and the neceſſary utenſils for dreſſing and eating their meat, and ſhall give notice thereof to the commanding officer, and ſhall furniſh the ſame accordingly; in ſuch caſe, they ſhall provide their own victuals, and the officers ſhall pay the ſums out of the ſubſiſtence money for diet and ſmall beer to ſuch ſoldiers, and not to the perſons on whom they are quartered; except on a march, or recruiting. *ſ.* 25.

In all places where horſe or dragoons ſhall be quartered, the men and their horſes ſhall be billeted in one and the ſame houſe (except in caſe of neceſſity); and in no caſe there

there ſhall be leſs than one man billeted, where there ſhall be one or two horſes, nor leſs than two men where there ſhall be four horſes, and ſo in proportion. *ſ.* 27.

Officers may remove or exchange men or horſes, with others quartered in the ſame town; provided the numbers ſo exchanged are equal: and the conſtables, or other officers, ſhall billet them accordingly. *ſ.* 28.

Any juſtice by his warrant, may command any conſtable or other officer, to give an account in writing of the number of officers and ſoldiers billeted by them, and alſo of the names of the perſons on whom they are billeted, with the ſtreet or place where they dwell, and the ſigns if any; that it may appear where they are quartered, the better to prevent abuſes in billeting of them. *ſ.* 67.

In *Weſtminſter* and *Southwark*, the petty conſtables ſhall deliver liſts on oath at every quarter ſeſſions, of the houſes and perſons obliged to receive ſoldiers quartered, and the number billeted in each houſe; the liſts to remain with the clerk of the peace, to be inſpected without fee: and the clerk ſhall deliver copies at 2 *d.* a ſheet containing 150 words: conſtables making default ſhall forfeit 5 *l.* to the poor by diſtreſs, by warrant of one juſtice; for want of diſtreſs, to be impriſoned not more than three months, nor leſs than one. *ſ.* 37.

VI. To remove in time of elections.

On notice from the clerk of the crown, to the ſecretary at war, of any writ made out for the election of a member to ſerve in parliament, he ſhall ſend orders for removing ſoldiers two miles or more from the place of election, at leaſt one day before the election, and continue at leaſt one day after the poll taken: But this not to extend to *Weſtminſter*, or other place of reſidence of the royal family, or fortified places, or any officer or ſoldier having a right to vote at ſuch election. 8 *G.* 2. *c.* 30.

VII. Having wives or children to be examined as to their ſettlement.

If any non-commiſſioned officer or ſoldier ſhall have wife, child, or children; two juſtices may ſummon him, where he is quartered, to make oath of the place of his laſt legal ſettlement; who ſhall obey ſuch ſummons, and make oath accordingly: And the juſtice ſhall give an atteſted

copy

copy of such affidavit, to be delivered to the commanding officer, to be produced when required. And being summoned again, he shall not take another oath with regard to his settlement, but shall leave a copy of the former. 5 *G.* 3. *c.* 7. *s.* 29.

VIII. Destroying the game.

If any officer or soldier shall, without leave of the lord of the manor under his hand and seal, take or kill any hare, coney, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty's game, and be convicted thereof on oath of one witness, before one justice; every officer so offending shall forfeit 5 *l.* to the poor; and the commanding officer upon the place, for every offence committed by any soldier under his command, shall forfeit 20*s.* to be paid and distributed in manner aforesaid. And if, upon conviction by the justices, and demand thereof made by the constable or overseers of the poor, he shall not in two days pay the said penalties, he shall forfeit his commission. *s.* 47.

IX. Sued for debt.

No volunteer shall be taken out of the service, by any process, other than for some criminal matter, unless for a real debt, or other just cause of action, and unless affidavit be made before a judge of the court, or before some person authorized to take affidavits in such court, that the original sum due amounts to 10 *l.* a memorandum of which oath shall be indorsed on the process; and if he shall be otherwise arrested, the judge may discharge him, and award costs. *s.* 64.

But the plaintiff, on notice given in writing of the cause of action to such person, or left at his last place of residence before listing, may file a common appearance, in an action to be brought for any debt, so as to intitle him to proceed therein to judgment and outlawry, and to execution, other than against his body. *s.* 65.

X. Guilty of crimes.

The king may appoint courts martial, for trial of the offences of soldiers, by the articles of war. *s.* 53.

And every officer and soldier who shall begin, excite, cause, or join in any mutiny or sedition, or shall not use his

his utmoſt endeavours to ſuppreſs the ſame, or ſhall not give immediate notice thereof to his commanding officer, or ſhall deſert, or liſt in any other regiment, or ſhall be found ſleeping on his poſt, or ſhall leave it before relieved, or ſhall hold correſpondence with the enemy, or ſtrike or uſe any violence againſt his ſuperior officer in the execution of his office, or ſhall diſobey his lawful commands, ſhall ſuffer death, or ſuch other puniſhment as a court martial ſhall inflict. *ſ.* 1.

But the trial of offences by a court martial ſhall not exempt them from the ordinary proceſs of law. *ſ.* 9.

And if any officer or ſoldier ſhall be accuſed of any capital crime, or of any violence or offence againſt the perſon, eſtate, or property of any of the king's ſubjects, the commanding officer ſhall uſe his utmoſt endeavour to deliver over ſuch accuſed perſon to the civil magiſtrate; and ſhall alſo be aiding to the officers of juſtice, in ſeizing and apprehending him, in order to bring him to trial; on pain, on conviction before two juſtices, by the oaths of two witneſſes, of being *ipſo facto* caſhiered and diſabled; provided the conviction be affirmed at the next ſeſſions, and a certificate thereof be tranſmitted to the judge advocate, who ſhall certify the ſame to the next court martial. *ſ.* 58.

But no perſon acquitted or convicted of capital offences by the civil magiſtrate, ſhall be puniſhed for the ſame by a court martial, otherwiſe than by caſhiering. *ſ.* 37.

By the 19 *G.* 2. *c.* 21. Soldiers convicted of profane curſing or ſwearing, and not paying the penalty, ſhall not be committed to the houſe of correction as other offenders, but ſhall be put in the ſtocks for one hour, for every ſingle offence; and for any number of offences, of which they ſhall be convicted at one and the ſame time, two hours.

XI. Pay.

The officer who ſhall receive the pay or ſubſiſtence money, ſhall immediately upon receipt thereof, give publick notice to all perſons keeping inns or other places where ſoldiers are quartered to repair to their quarters, at ſuch time as they ſhall appoint for diſtribution thereof to the officers and ſoldiers, which ſhall be within four days after the receipt thereof: And the ſaid innkepers and others ſhall be firſt paid, before any part of the pay be diſtributed

to

to the officers or ſoldiers; provided the accounts exceed not for a commiſſion officer of horſe under the degree of a captain, for diet and ſmall beer 2 *s.* a day; nor for a commiſſion officer of dragoons under the degree of a captain 1 *s.* nor for a commiſſion officer of foot under the degree of a captain 1 *s.* and for each horſe 6 *d.* nor for one light horſeman's diet and hay and ſtraw for his horſe 1 *s.* nor for one dragoon's diet and hay and ſtraw for his horſe 1 *s.* nor for one foot ſoldier's diet 4 *d.* And if any officer ſhall not give ſuch notice, and ſhall not immediately on producing ſuch account pay the ſame, on complaint and oath made thereof by two witneſſes at the next ſeſſions, the paymaſter (on certificate of the juſtices in ſuch ſeſſions of the ſum due, and to whom the ſame is owing) ſhall pay the ſame out of the ſaid officer's arrears, on pain of forfeiting his office, and diſability; and if no ſuch arrears be due, the paymaſter ſhall deduct the ſums to be paid, purſuant to the juſtices certificate, out of the next pay of the regiment; and ſuch officer ſhall for ſuch his offence, or for neglecting to give ſuch notice, be *ipſo facto* caſhiered. And where it ſhall happen, that the ſubſiſtence money due to any officer or ſoldier ſhall by any accident not be paid, or ſuch officer or ſoldier ſhall neglect to pay the ſame; or where any forces ſhall be upon their march, ſo that no ſubſiſtence can be remitted to them, or they ſhall neglect to pay the ſame; every ſuch officer ſhall, before his departure out of his quarters, make up the accounts with every perſon with whom ſuch ſoldiers ſhall have quartered, and ſign a certificate thereof, and give the ſame to the party to whom ſuch money is due, with the name of the regiment, troop, or company to which he ſhall belong, that the ſame may be tranſmitted to the paymaſter, who ſhall immediately pay the ſame, under pain as is before directed for non-payment of quarters. 5 *G.* 3. *c.* 7. *ſ.* 33.

XII. Deſerting.

The conſtable may take up any perſon reaſonably ſuſpected to be a deſerter, and carry him before a juſtice in or near the place, who ſhall examine ſuch ſuſpected perſon; and if by his confeſſion, or the oath of one witneſs, or the knowledge of ſuch juſtice, he ſhall be found to be a deſerter, the juſtice ſhall forthwith cauſe him to be conveyed to the county gaol, or houſe of correction (or the *Savoy* in *London*) and tranſmit an account thereof to the ſecretary

ſecretary at war; and the keeper of ſuch gaol or houſe of correction ſhall receive the ſubſiſtence of ſuch deſerter, for his maintenance while he ſhall be in cuſtody, but ſhall not be intitled to any fee for his impriſonment. *ſ.* 49.

But no officer may break open any houſe to ſearch for deſerters, without a juſtice's warrant; on pain of 20 *l.* *ſ.* 52.

And the juſtice, before whom he is brought, ſhall iſſue his warrant to the collector of the land tax, of the pariſh or townſhip where ſuch deſerter ſhall be apprehended, for paying out of the land tax money by him collected or to be collected, to the hands of him who ſhall apprehend, or cauſe to be apprehended, ſuch deſerter, the ſum of 20 *s.* the ſame to be allowed on his account. *ſ.* 50.

And if any perſon ſhall knowingly harbour or aſſiſt any deſerter, he ſhall forfeit 5 *l.* and if any perſon ſhall knowingly buy or exchange or otherwiſe receive any arms, cloaths, or furniture, belonging to the king, from any ſoldier or deſerter, or change the colour thereof, he ſhall forfeit 5 *l.* and on conviction by the oath of one witneſs, before one juſtice, the ſaid penalties ſhall be levied by diſtreſs; half the firſt penalty to be to the informer, by whoſe means ſuch deſerter ſhall be apprehended; and half the laſt penalty to the informer; and half of both, to the officer to whom the deſerter did belong: and if ſuch perſon have not ſufficient, or ſhall not pay the penalty in four days, the juſtice ſhall commit him to gaol for three months, or cauſe him to be publickly whipped. *ſ.* 51.

And by the 1 *G. ſt.* 2. *c.* 47. If any perſon (other than inliſted ſoldiers againſt whom ſufficient remedy is already provided) ſhall perſuade any ſoldier to deſert, he ſhall on conviction in ſix months forfeit 40 *l.* to the king, or to any other who ſhall ſue for the ſame in any court at *Weſtminſter*; and if he ſhall not have goods worth 40 *l.* or from the circumſtances of the crime it ſhall be thought proper, the court may award the offender to priſon not exceeding ſix months, and to ſtand in the pillory one hour.

[And here it may be requiſite to animadvert upon a cuſtom, which hath unaccountably prevailed, for juſtices of the peace at their diſcretion to prolong the time limited by the officers in the ſoldiers *furloughs*. No law gives, nor ever did give to them, any ſuch power; and it might be very prejudicial to the publick ſervice, if it ſhould be in the power of a juſtice of the peace, when a ſoldier's immediate preſence is wanted, as it may be at any time,

by lengthening the furlough, to prevent the ſoldier's attendance. In caſe of ſickneſs, or other unavoidable accident, it may be uſeful for a juſtice to certify upon the back of the furlough ſuch neceſſity, ſpecially ſetting forth the ſame; to prevent his being apprehended as a deſerter, or puniſhed at his return. But nevertheleſs, ſuch certificate is no way obligatory or concluſive, and a juſtice of the peace hath no more to do with it than any other credible perſon or perſons.]

XIII. Setting up trades after their diſcharge.

By the 22 *G.* 2. *c.* 44. All officers, mariners, and ſoldiers who have been employed in his majeſty's ſervice, and not deſerted, may ſet up and exerciſe ſuch trades as they are apt for, in any town or place within *Great Britain* or *Ireland* (except *Oxford* and *Cambridge*); and if they ſhall be ſued thereupon, they ſhall have double coſts.

And by the 3 *G.* 3. *c.* 8. with regard to officers, mariners, ſoldiers, and marines, who have ſerved ſince *Nov.* 29, 1748, it is enacted more at large as followeth: Whereas there have been and are divers officers, mariners, ſoldiers, and marines, who have ſerved in the late war, ſome of whom uſed trades, others were apprentices who had not ſerved out their times, and others by their own induſtry have made themſelves apt and fit for their trades; many of which, the war being now ended, would willingly employ themſelves in thoſe trades they were formerly accuſtomed to, or which they are apt or able to follow, but may be hindered from exerciſing the ſame in certain cities, corporations, and other places, becauſe of certain by-laws and cuſtoms of thoſe places, and of the ſtatute of the 5 *Eliz.* prohibiting the uſe of certain trades by any perſon who hath not ſerved 7 years apprenticeſhip; it is enacted, that all ſuch officers, mariners, ſoldiers, and marines, who have ſerved ſince the ſaid 29th day of Nov. 1748, and not deſerted, and alſo their wives and children, may ſet up and exerciſe ſuch trades as they are apt and able for, in any town or place within Great Britain or Ireland (except Cambridge and Oxford) without any moleſtation by reaſon of the uſing of ſuch trade; nor ſhall they, or their wives or children, during the time they ſhall exerciſe ſuch trades, be removeable from ſuch place to their laſt legal place of ſettlement, by virtue of any law now in being relative to the ſettlement of the poor, until they ſhall become

come actually chargeable; and if they ſhall be ſued for exerciſing ſuch trade, they ſhall have double coſts. And two juſtices may cauſe ſuch officer, mariner, ſoldier, or marine, to be ſummoned before them in the town or place where they ſhall exerciſe ſuch trade, in order to make oath of the place of their laſt legal ſettlement; which ſummons they ſhall obey, and make oath accordingly. And the juſtices ſhall give an atteſted copy of ſuch affidavit ſo made before them, to the perſon making the ſame, in order that he may produce it when required. Which atteſted copy ſhall at any time be admitted as evidence as to ſuch ſettlement, at any general or quarter ſeſſions. And if he ſhall be ſummoned again to make oath as aforeſaid: on ſuch atteſted copy being produced, he ſhall not be obliged to make any further oath with regard to his ſettlement, but ſhall leave a copy of ſuch atteſted copy of his examination, if required.

XIV. Maintenance after their diſcharge.

By the 43 *El. c.* 3. Every pariſh ſhall be charged with a weekly ſum towards the relief of ſick, hurt, and maimed ſoldiers and mariners, as the juſtices in ſeſſions ſhall appoint; ſo as no pariſh be rated above 10 *d.* nor under 2 *d.* weekly; and ſo as the total ſum in any county where there ſhall be above 50 pariſhes, do not exceed 6 *d.* for every pariſh.

But as this is left to the diſcretion of the juſtices, this is not uſually done; but they are left to be provided for by the particular pariſhes whereunto they belong, or to the proviſions of the royal hoſpitals of *Greenwich* or *Chelſea* reſpectively.

With regard to the out penſioners of *Chelſea* hoſpital, it is required by the ſtatute of the 28 *G.* 2. *c.* 1. that the juſtices of the peace ſhall take affidavits of their being alive (or of the time of their deaths reſpectively) half yearly, without fee. *ſ.* 2.

XV. Probate of their wills.

The probate of the will, or letters of adminiſtration of any common ſoldier or ſeaman, who ſhall be ſlain or die in the ſervice, ſhall be exempted from the ſtamp duties, a certificate being produced from the captain under whom he ſerved at the time of his death, and oath made of

of the truth thereof, before the proper judge or officer, for which oath no fee shall be taken. 5 *W. c.* 21. *s.* 6.

THERE are annual acts likewise for the better governing his majesty's MARINE forces whilst on shore; which are in most respects the same with the above regulations concerning the land forces: only with some necessary variations, upon the account of those forces being subject to the jurisdiction of the admiralty.

Thus the lord high admiral, or three commissioners of the admiralty, are to form *articles of war*, and grant commissions for holding *courts martial*.

The justice's certificate of *inlisting*, is to set forth, that the 2d and 3d sections of the articles of war for the better government of his majesty's marine forces, while on shore in Great Britain or Ireland were read to the person inlisted, and that he hath taken the oath of fidelity mentioned in the 12th section of the said articles of war.

Notice of a *deserter* being apprehended, is to be sent to the secretary of the admiralty.

The *billetting*, and *carriages*, are to be in pursuance of orders from the admiralty: And there is a provision (as it was in the mutiny acts, till within two or three years last past), that no waggon, wain, cart, or carriage, shall be obliged to carry above *twenty* hundred weight; whereas in two or three of the last mutiny acts it is expressed (by mistake, most probably) that they shall not be obliged to carry above *thirty* hundred weight; which is inadequate, and will bring the proportion of a single horse cart at that rate to six hundred weight, which is generally impossible for a single horse to draw. And therefore it seemeth, that the word *twenty* ought to be restored.

Spirituous liquors. See **Excise.**
Squibs. See **Fireworks.**
Stabbing. See **Homicide.**

Stamps.

1. THE ſtatutes relating to theſe duties are Statutes.

5 *W.* *c.* 21.	5 *G.* *c.* 19.
6 & 7 *W.* *c.* 12.	6 *G.* *c.* 21.
9 & 10 *W.* *c.* 25.	11 *G.* *c.* 8.
9 & 10 *W.* *c.* 44.	16 *G.* 2. *c.* 26.
1 *An.* *ſt.* 2. *c.* 22.	29 *G.* 2. *c.* 13.
8 *An.* *c.* 9.	30 *G.* 2. *c.* 19.
9 *An.* *c.* 23.	31 *G.* 2. *c.* 31.
10 *An.* *c.* 19.	32 *G.* 2. *c.* 35.
10 *An.* *c.* 26.	2 *G.* 3. *c.* 36.
12 *An.* *ſt.* 1. *c.* 2.	5 *G.* 3. *c.* 35, 46, 47.
12 *An.* *ſt.* 2. *c.* 9.	

2. In one of which ſtatutes (*viz.* 10 *An.* *c.* 19.) there is a clauſe which brings all the reſt within the juriſdiction of the juſtices of the peace, and almoſt the whole law relating to this title; and is as follows: Power of the juſtices in regard to theſe duties.

Two juſtices of the peace reſiding near the place where any pecuniary forfeitures not exceeding twenty pounds on any act touching any the duties under the management of the commiſſioners of the duties on ſtamped vellum, parchment, and paper, ſhall be incurred, or any offence againſt any of the ſame acts ſhall be committed in any wiſe relating to the ſame duties, by which any ſum of money only may be forfeited, may hear and determine the ſame; who ſhall on information or complaint, within a year after ſeizure made or offence committed, ſummon the party accuſed, and witneſſes; and may iſſue warrants for levying the penalties by diſtreſs and ſale, if not redeemed in ſix days. 10 *An.* *c.* 19. *ſ.* 172.

And the ſaid juſtices where they ſee cauſe, may mitigate the penalties; the charges being firſt allowed: and ſo as they reduce not the penalty to leſs than double duty, over and above the ſaid charges. *ſ.* 173.

And no certiorari ſhall ſuperſede the proceedings of the ſaid juſtices. *ſ.* 174.

And it is generally provided by the ſeveral acts, that the ſaid forfeitures ſhall be diſtributed, half to the king, and half to him that ſhall ſue. But by the 5 *G.* 3. *c.* 46. All penalties and forfeitures by that act, not therein otherwiſe ordered, ſhall be half to the king, and half to him that ſhall ſue in any court of record, with full coſts. *ſ.* 41.

The ſeveral ſtamp duties.

3. The ſaid duties when brought together from the ſeveral acts, ſeem to be as followeth;

	By 5 *W.* *c.* 21.	By 9 & 10 *W.* *c.* 25.	By 12 *A.* *ſt.* 2. *c.* 9.
(1) For every ſkin and piece of vellum or parchment, or ſheet of paper, on which ſhall be written any grant, or letters patents under the great ſeal, or the ſeal of the Duchy of *Lancaſter*, or of any honour, dignity, promotion, franchiſe, liberty or privilege, or exemplifications of the ſame (commiſſions of rebellion in proceſs, and charity briefs excepted) ſhall be paid ——	40 *s.*	40 *s.*	40 *s.*
(2) Grant from the king of any ſum above 100 l. which ſhall paſs the great or privy ſeal — —	40 *s.*	40 *s.*	40 *s.*
(3) Grant of any office above 50 *l.* a year —— —	40 *s.*	40 *s.*	40 *s.*
(4) Pardon of any crime or forfeiture, warrant of reprieve or relaxation from any fine, corporal puniſhment, or other forfeiture (general circuit or *Newgate* pardon excepted) —	40 *s.*	40 *s.*	40 *s.*
(5) Diſpenſation to hold two livings, or any diſpenſation or faculty from the archbiſhop of *Canterbury*, or maſter of the faculties ——	40 *s.*	40 *s.*	40 *s.*
(6) Admittance of a fellow of the college of phyſicians, or of any attorney, clerk, advocate, proctor, notary, or other officer in any court whatſoever (except annual officers in corporations or inferior courts, whoſe office is under 10 *l.* a year, in ſalaries, fees, or other perquiſites)	40 *s.*	40 *s.*	40 *s.*
(7) Appeal from the court of admiralty, arches, or the prerogative courts ——	40 *s.*	40 *s.*	40 *s.*
(8) Grant of lands in fee, leaſe for years, or other grant or profit (not herein particularly charged) under the great ſeal, or privy ſeal, or ſeal of the exchequer or duchy of *Lancaſter* —	40 *s.*	40 *s.*	

(9) Pre-

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſt.* 2. *c.* 9.
(9) Preſentation or donation under the great ſeal, collation, or any preſentation or donation by any patron to any ſpiritual promotion of 10 *l.* a year in the king's books —	40 *s.*	40 *s.*	
(10) Letters patents for charity briefs — —	40 *s.*		
(11) General Circuit or *Newgate* Pardon —— ——	40 *s.*		
(12) Regiſter, entry, teſtimonial, certificate of a degree in the univerſities or inns of court (except the regiſter or entry of a bachelor of arts)	40 *s.*		
And by the 2 *G.* 3. *c.* 36. for the regiſter, entry, teſtimonial, or certificate of the degree of utter barriſter in any of the four inns of court, 40 *s.* more. And by the 5 *G.* 3. *c.* 47. 6 *l.* more			
(13) Inſtitution, or licence, that ſhall paſs the ſeal of any biſhop, chancellor, or other ordinary, or any eccleſiaſtical court (except licences to ſchool-maſters and tutors) —	5 *s.*	5 *s.*	5 *s.*
(14) Letters of mart —	5 *s.*	5 *s.*	5 *s.*
(15) Exemplification that ſhall paſs the ſeal of any court ——	5 *s.*	5 *s.*	
(16) Licence to ſchoolmaſters and tutors —— ——	5 *s.*	5 *s.*	
(17) Writ of error, certiorari, or appeal (except to the delegates) —	5 *s.*	5 *s.*	
(18) *Significavit pro corporis deliberatione* —— ——	5 *s.*	5 *s.*	
(19) Sentence in the admiral's court, or cinque ports, or any attachment out of the ſaid courts, or relaxation of the attachment —— ——	5 *s.*	5 *s.*	
(20) Probate of a will, or letters of adminiſtration for an eſtate above 20 *l.* value (except of common ſeamen or ſoldiers ſlain or dead in the ſervice)	5 *s.*	5 *s.*	
(21) Recognizance, ſtatute ſtaple, or ſtatute merchant ——	5 *s.*	5 *s.*	
(22) Conveyances, ſurrender of grants or offices, releaſe or other deed			

inrolled

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſt.* 2. *c.* 9.
inrolled of record in any court at *Weſtminſter*, or any court of record, or by any *cuſtos rotulorum*, or clerk of the peace —— ——	5 *s.*		
(23) Writ of covenant for levying of fines —— ——	5 *s.*		
(24) Writ of entry for ſuffering a common recovery ——	5 *s.*		
(25) Licence for, or certificate of marriage (except the certificate of the marriage of a ſeaman's widow)	5 *s.*		
(26) Writ of *habeas corpus* —	5 *s.*		
(27) Beneficial warrant or order under the king's ſign manual (except for the navy, army, and ordnance)	2*s.* 6*d.*	2*s.* 6*d.*	2*s.* 6*d.*
(28) Record of *Niſi Prius* or *Poſtea*	2*s.* 6*d.*	2*s.* 6*d.*	
(29) Judgment ſigned by the maſter of any office, or his deputy or ſecondary, or by any prothonotary or his ſecondary, deputy, or clerk, or other officer in the courts at *Weſtminſter*	2*s.* 6*d.*	2*s.* 6*d.*	
(30) Commiſſion iſſuing out of an eccleſiaſtical court, not otherwiſe particularly charged — —	2*s.* 6*d.*	2*s.* 6*d.*	
(31) Warrant, monition, or perſonal decree in any court of admiralty or the cinque ports — —	2*s.* 6*d.*	2*s.* 6*d.*	
(32) Transfer of ſtock in any company (over and above the duty of 2*s.* 3*d.* by the 10 *An.* *c.* 19. and other duties) —— ——			4*s.* 6*d.*
(33) Special bail in any court, and appearance thereon ——	1 *s.*	1 *s.*	
(34) Bill, anſwer, replication, rejoinder, interrogatories, depoſitions taken by commiſſion, or pleadings in any court of equity ——	1 *s.*	1 *s.*	
(35) Matriculation in the univerſities —— ——	1 *s.*	1 *s.*	
(36) Admiſſion into the inns of court —— ——	1 *s.*	1 *s.*	

And by the 2 *G.* 3. *c.* 36. 40*s.* more: And by the 5 *G.* 3. *c.* 47. 4*l.* more.

(37) In-

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſt.* 2. *c.* 9.
(37) Indenture (except for pariſh apprentices) leaſe, or deed poll, not otherwiſe charged;			
Charter party, policy of aſſurance, paſſport, bond, releaſe, contract, or other obligatory inſtrument, proteſt, procuration, letter of attorney, or any other notarial act ——		6*d.*	
Indenture (except for pariſh apprentices) leaſe or deed poll, not otherwiſe charged;			
Charged party, policy of aſſurance, paſſport, bond, releaſe, contract, or other obligatory inſtrument, proteſt, procuration, letter of attorney, or any other notarial act — —		6*d.*	
Indenture, leaſe, bond, or any deed not otherwiſe charged (except bail bonds and aſſignments thereof, and except indentures of pariſh apprentices) —— ——			6*d.*

Note; The above treble ſix penny inſtruments, being expreſſed with ſome confuſion, becauſe the ſame words which are in the 5 *W.* and 9 & 10 *W.* are not repeated in the 12th *An.* it is thought neceſſary to inſert them as they ſtand in the ſeveral acts.

(And moreover, by the 30 *G.* 2. *c.* 19. for every inſtrument ſo charged with a ſix penny ſtamp by the ſaid ſtatute of the 12 *An.* there ſhall be paid over and above all other duties, 1 *s.*)

By the 5 *G.* 3. *c.* 35. Whereas there is a doubt, whether policies of aſſurance and charter parties are to be ſtamped as deeds, by the 12 *An.* and 30 *G.* 2. it is declared, that the 6*d.* by the 12 *An.* and 1 *s.* by the 30 *G.* 2. on *deeds not otherwiſe charged*, doth extend to policies of aſſurance and charter parties, *ſ.* 10.

5 *W.* 9 *&.* 12 *A.*
c. 21. 10 *W ſt.* 2.
c. 24. *c.* 9.

And by the 10 *An. c.* 26. and 5 *G.* 3. *c.* 35. for a policy of aſſurance, there ſhall be further paid 2 *s.* 6 *d.* — And if the properties of more than one perſon, in any ſhip. cargo, or both, or of more than a particular number of perſons in general partnerſhip, or of more than one body politick or corporate, to a greater amount in the whole than 100 *l.* in any ſhip, cargo, or both, be aſſured on the ſame policy; ſuch policy ſhall be void, and the premium paid thereon ſhall remain the property of the aſſurer: And if any riſque or adventure, diſtinct from that mentioned in the original policy, and on which any further premium ſhall be given, ſhall be by any writing not duly ſtamped added to the ſaid original policy; ſuch additional aſſurance ſhall be void, and the premium paid thereon ſhall remain the property of the aſſurer. Provided, that it ſhall be lawful to aſſure the properties of any number of perſons whatſoever, in any ſhip, cargo, or both, by one policy ſtamped with five ſtamps of 5 *s.* each. 5 *G.* 3. *c.* 46. *ſ.* 3, 4.

And every deed, inſtrument, note, memorandum, letter, or other minument or writing, between the captain or maſter or owner of any ſhip or veſſel, and any merchant, trader, or other perſon, in reſpect of the freight or conveyance of any money, goods, wares, merchandize, or effects on board of any ſuch ſhip or veſſel, ſhall be deemed a *charter party.* 5 *G.* 3. *c.* 35. *ſ.* 11.

(38) Decree or diſmiſſion in chancery, or other court of equity —— 6 *d.* 6 *d.*

(39) Affidavit (except for burying in woollen, and except before officers

of

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* 2. *c.* 9.
of the cuſtoms, or juſtices of the peace, and commiſſioners for levying any aids or duties) —— ——		6 *d.*	6 *d.*
(And by the 32 *G.* 2. *c.* 35. For every affidavit in any court of law or equity at *Weſtminſter*, great ſeſſions in *Wales*, or court of the county palatine of *Cheſter* (except as before excepted) 6 *d.* more)			
(40) Copy of ſuch affidavit to be read or filed in any court ——		6 *d.*	6 *d.*
(And by the 32 *G.* 2. *c.* 35. For copies of the affidavits in the ſaid act, as before expreſſed, to be read or filed in any court, 6 *d.* more.)			
(41) Original writ (except on which a *capias* iſſues) *ſubpœna*, bill of *Middleſex*, *latitat*, writ of *capias*, *quo minus*, *dedimus poteſtatem*, to take anſwers, examine witneſſes, or appoint guardians, and any other writ, proceſs, or mandate iſſuing out of any court holding plea, where the debt or damage amounts to 40 *s.* (except writs of covenant for levying of fines, writs of entry for common recoveries, and writs of *habeas corpus*) ——		6 *d.*	6 *d.*
(And by the 32 *G.* 2. *c.* 35. a further ſum of 6 *d.*)			
(42) Entry of an action in the courts of corporation, and other courts, out of which no writ, proceſs, or mandate iſſues, holding plea, where the debt or damage amounts to 40 *s.*		6 *d.*	6 *d.*
(43) Common bail in any court, and appearance thereon ——		6 *d.*	6 *d.*
(And by the 32 *G.* 2. *c.* 35. For common bail to be filed in any court of law at *Weſtminſter*, or in any of the courts in the ſaid act before mentioned, and appearance thereon, a further ſum of 6 *d.*)			
(44) Rule or order in any court at *Weſtminſter* —— ——		6 *d.*	6 *d.*

	5 *W.* & 9 *W.* *c.* 21.	12 *A.* 10 *W.* *ſt.* 2. *c.* 25.	*c.* 9.
(And by the 32 *G.* 2. *c.* 35. a further ſum of 6 *d.*)			
(45) Copy of ſuch rule or order, or of any other record or proceedings in the ſaid courts, not otherwiſe charged —— ——	6 *d.*	6 *d.*	
(And by the 32 *G.* 2. *c.* 35. for every copy of ſuch rule or order 6 *d.* more)			
(46) Citation or monition in an eccleſiaſtical court, libel. allegation, depoſition, anſwer, ſentence, or final decree, inventory, or any copies of them —— ——	6 *d.*	6 *d.*	
(47) Indenture of pariſh apprentices	6 *d.*		
(48) Declaration, plea, replication, rejoinder, demurrer, or other pleadings in any court of law ——	1 *d.*	1 *d.*	
(And by the 32 *G.* 2. *c.* 35. for every declaration, plea, replication, rejoinder, demurrer, or other pleadings, in any court of law at *Weſtminſter*, or in any courts of the principality of *Wales*, or of the counties palatine; a further ſum of 1 *d.*)			
(49) Copy thereof ——	1 *d.*	1 *d.*	
(And by the 32 *G.* 2. *c.* 35. for every copy of ſuch inſtrument, as ſpecified in the ſaid act, under the laſt preceding article; a further ſum of 1 *d.*			
(50) Depoſitions in chancery, or other court of equity (excep. the paper draughts of depoſitions taken by commiſſion before they are ingroſſed) not before charged; copy of any bill, anſwer, plea, demurrer, replication, rejoinder, interrogatories, depoſitions, or other proceedings in any court of equity —— ——	1 *d.*	1 *d.*	
(And by the 32 *G.* 2. *c.* 35. for every piece of paper or parchment, on which ſhall be written any depoſition in chancery or other court of equity at			

Weſtminſter

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſ.* 2. *c.* 9,
Weſtminſter (except the paper draughts of depoſitions taken by commiſſion before they are ingroſſed) copy of any bill, anſwer, plea, demurrer, replication, rejoinder, interrogatories, depoſitions, or other proceedings in ſuch courts of equity, a further ſum of 1 *d.*)			
(51) Copy of a will ——	1 *d.*		1 *d.*

(Furthermore, beſides the duties principally impoſed by the three acts abovementioned, there are other duties by ſeveral other acts, as follows:)

(52) For every entry, minute, or memorandum, in the court book, roll, or record, of any corporation or company, of any admiſſion into ſuch corporation or company, 2 *s*; by the 5 *G.* 3. *c.* 46. *ſ.* 2.

And if any town clerk, or other proper officers, ſhall neglect or refuſe to make ſuch entry on the proper duty in the court book, roll, or record, within one month after any perſon ſhall be admitted; he ſhall forfeit 10 *l. id.*

(53) For every certificate or debenture for any drawback of cuſtoms, 8 *d.* by 9 *An.* *c.* 23.

(54) Bill of lading ſigned for goods to be exported, 4 *d.* by 9 *An.* *c.* 23.

(55) Wine licence 4 *s.* by 9 *An.* *c.* 23. And by the 30 *G.* 2. *c.* 19. a further duty of 5 *l.* for perſons not having either ale or brandy licence; of 4 *l.* for perſons having an ale licence, and no brandy licence; and of 40 *s.* for perſons having both ale and brandy licence. And by the 31 *G.* 2. *c.* 31. the ſame is extended to ſweets or made wines.

(56) Licence for retailing beer, ale, or other exciſable liquors, 1 *s* by 9 *An.* *c.* 23. and 20 *s.* more, by the 29 *G.* 2. *c.* 12.

And to prevent frauds therein, every victualler or alehouſe keeper ſhall, on demand by any officer of the ſtamp duties, produce his licence, and permit him at his own expence to have a copy thereof; on pain of 40 *s.* 5 *G.* 3. *c.* 46. *ſ.* 20.

And every clerk of the peace, town clerk, common clerk, or perſon acting as ſuch, ſhall on demand by any officer of the ſtamp duties, or within three days next after, deliver to ſuch officer, a true liſt of the names and places of abode, of all the victuallers, alehouſekeepers and other

other perſons then licenſed to ſell ale or beer, or other exciſeable liquors, by retail, within their reſpective diſtricts; and on delivery thereof, ſuch officer ſhall pay to him after the rate of one farthing for every licenſed perſon inſerted in the liſt: And if he ſhall refuſe or neglect to deliver ſuch liſt, or not inſert therein a full and true account; he ſhall forfeit 5 l. *ſ.* 21.

(57) Surrender of, or admittance to a copyhold, or any grant or leaſe by copy of court roll, or any other copy of the court roll of any honour or manor (except the original ſurrender to the uſe of a will, and the court roll or book wherein the proceedings of the court are entered) 2 *s.* 3 *d.* by 10 *An.* *c.* 19.

And if any ſteward or other officer of any copyhold court ſhall demand and take from any perſon any fee for ſuch ſurrender, admittance, grant, or leaſe, or any other copy of any court roll, without at the ſame time demanding and receiving the ſtamp duty, and delivering ſuch ſurrender or admittance, grant or leaſe, or copy; he ſhall forfeit 10 l. 5 *G.* 3. *c.* 46. *ſ.* 7.

But this ſhall not charge any copy of a ſurrender or admittance to a cuſtom right or tenant right eſtate, not being copyhold. 12 *An.* *ſt.* 1. *c.* 2. *ſ.* 49.

(58) By the 8 *An.* *c.* 9. Over and above the ſtamp duties upon the indenture, there ſhall be paid by the maſter, 6 *d.* for every 20 *s.* of every ſum of 50 *l.* or under; and the duty of 1 *s.* for every 20 *s.* of every ſum above 50 *l.* which ſhall be given or contracted for, in relation to any clerk, apprentice, or ſervant (except pariſh apprentices), and proportionably for greater or leſſer ſums.

And there are divers regulations concerning the ſame, which belong more properly to the title Apprentices; and therefore are there inſerted.

Writings exempted from ſtamps.

4. But none of theſe acts ſhall charge any bills of exchange, accounts, bills of parcels, bills of fees, or any bills or notes (not ſealed) for payment of money at ſight, or on demand, or at the end of certain days of payment. 5 *W.* *c.* 21. *ſ.* 5.

Nor any warrant made by, or recognizance taken before juſtices of the peace. 6 & 7 *W.* *c.* 12. *ſ.* 2.

Nor any warrants or inſtruments ſigned by the chief juſtices in eyre, or by any warden, lieutenant, or other officer of the king's foreſts or chaſes. 10 *An.* *c.* 26. *ſ.* 74.

Nor any proceedings of a court martial, which relate to the trial of any common ſoldier. 6 & 7 *W.* *c.* 12. *ſ.* 2.

Nor

Nor any orders, decrees, or proceedings before commiſſioners of the ſewers. 6 & 7 *W.* *c.* 12. *ſ.* 2.

Nor in the court of ſtannaries. *id.*

Likewiſe perſons admitted to ſue or defend *in forma pauperis* ſhall not be liable to the ſtamp duties. 5 *W.* *c.* 21. *ſ.* 14.

Inſtead of ſeveral ſtamps, there may be one general ſtamp for the whole.

5. And to prevent the multiplication of ſtamps, upon ſuch pieces of vellum or parchment, or ſheets or pieces of paper, on which ſeveral duties are by ſeveral acts impoſed; it ſhall be lawful for the commiſſioners, inſtead of the diſtinct ſtamps directed by the ſeveral acts, to cauſe one ſtamp to be provided to denote the ſaid ſeveral duties. 30 *G.* 2. *c.* 19. *ſ.* 18.

Officers for the ſtamp duties.

6. For the management of the ſtamp duties, the king may appoint commiſſioners; who ſhall ſubſtitute inferior officers. 5 *W.* *c.* 21. *ſ.* 7. 9 & 10 *W.* *c.* 25. *ſ.* 48.

And with regard to the duties on the ſeveral acts before the 8 *An.* the ſaid officers, before they ſhall act, ſhall take an oath for the due execution of their office, before one or more of the commiſſioners; and by the ſaid act of the 8 *An.* and the ſubſequent acts, they may take the ſaid oath, with reſpect to the duties on thoſe acts, before one or more of the commiſſioners, or a juſtice of the peace.

Price of the paper to be ſtamped.

7. The commiſſioners of the treaſury ſhall once a year at leaſt ſet the prices of ſtamped parchment and paper; and the commiſſioners of the ſtamp duties ſhall (beſides the ſtamps abovementioned) ſtamp the ſaid price upon every piece of parchment and paper. 6 & 7 *W.* *c.* 12. *ſ.* 9.

Allowance on prompt payment.

8. By the ſeveral acts, the commiſſioners ſhall make an allowance (of four *per cent.* for ſix months, 5 *G.* 3. *c.* 46. *ſ.* 5, 6.) for prompt payment, to perſons who ſhall bring parchment or paper to be ſtamped, or buy the ſame of them ſo ſtamped, the duty whereof ſhall amount to 10 *l.* or upwards, at any one time, (except in the caſe of ſtamps for wine licences, by the 32 *G.* 2. *c.* 19.)

Penalty for writing before ſtamped.

9. If any perſon ſhall write on any paper or parchment, before it be duly ſtamped as by the 5 *W.* he ſhall forfeit 5 *l.* (And by the 9 & 10 *W.* 5 *l.* more.) And an officer offending, ſhall over and above forfeit his office. And an attorney offending ſhall be diſabled to practiſe. 5 *W.* *c.* 21. *ſ.* 11.

And if any inſtrument ſhall be written by any perſon (not being a known clerk or officer in reſpect of his office intitled to write the ſame) on paper or parchment not duly ſtamped, there ſhall be paid over and above the duty the ſum of 5 *l.* (and by the 10 & 11 *W.* 5 *l.* more); and the inſtrument

inſtrument ſhall not be given in evidence in any court, until both the duty and the ſaid ſum ſhall be paid, and a receipt produced for the ſame, under the hand of ſome officer appointed to receive the duties, and until the ſame ſhall be ſtamped. 5 *W.* *c.* 21. *ſ.* 11.

And by the 9 *An.* *c.* 23. If any officer of the cuſtoms ſhall ſign any debenture not ſtamped, or if any other perſon ſhall write any debenture, bill of lading, or licence by that act charged with the ſtamp duties, or ſign ſuch bill of lading; he ſhall forfeit 10 *l.* with coſts: and an officer of the cuſtoms offending ſhall moreover forfeit his office. And there ſhall be paid for the ſame, over and above the duties, 5 *l.* to the king; and the inſtrument ſhall not be available till that be done.

And by the 10 *An.* *c.* 19. If any the matters required to be ſtamped by that act, ſhall be ingroſſed on paper not ſtamped, there ſhall be paid for the ſame (over and above the duties) 5 *l.* in like manner.

M. 13 *G.* *K.* and *Recks.* Upon a trial at bar, on an information in nature of a *quo warranto* for the office of burgeſs of *Chriſt Church*, the admiſſion of the defendant was produced, and it appeared to be a parchment that had only one ſtamp, and yet had five admiſſions entred upon it. And in order to make it good, they had annexed four other parchments, each of which was ſtamped. And the court held, that would not make it good; and that the proper way would have been, to have paid the four penalties, and to have had four new ſtamps on the firſt parchment. And for want of this there was a verdict againſt this and the other four defendants. *Str.* 716. 1 *Barnardiſt.* 8.

Clerk not entring inſtruments charged with the ſtamp duties.

10. And to prevent frauds, if any clerk or other officer ſhall neglect to enter or file any action, plaint, bill, appearance, admiſſion, or other thing in reſpect whereof any duty is payable, for four months; or ſhall not file the ſame before any ſubſequent proceeding ſhall be entred; or ſhall file any ſuch ſubſequent proceeding before the other ſhall have been filed as aforeſaid; he ſhall forfeit 20 *l.* Except where judgment is entred by confeſſion. 1 *An.* *ſt.* 2. *c.* 22. *ſ.* 1.

Officers to ſuffer their books to be inſpected.

11. And all publick officers, who ſhall have in their cuſtody any books, papers, files, records, remembrances, dockets, or proceedings, the ſight or knowledge whereof may tend to ſecure any of the ſtamp duties, or to the diſcovery of any fraud or omiſſion in relation thereto, ſhall, at ſeaſonable times, permit any officer authorized by the commiſ-

commiſſioners to inſpect the ſame, and take notes thereout, without fee; on pain of 50 *l.* 5 *G.* 3. *c.* 46. *ſ.* 38.

12. And the writing ſhall be either upon, or as near as conveniently may be to the ſtamp; on pain of 10 *l.* with full coſts. 1 *An. ſt.* 2. *c.* 22. *ſ.* 5. Writing to be near the ſtamp.

13. If any perſon ſhall write any thing, in reſpect whereof the ſtamp duties are payable, on any piece of paper or parchment, whereon there ſhall have been before any writing in reſpect whereof any duty was payable, before the ſame hath been again ſtamped; or ſhall eraſe or ſcrape out any name, ſum, date, or other thing, or fraudulently take off any ſtamp, with intent to uſe it in any other thing in reſpect whereof any duty is payable; he ſhall forfeit in like manner as for writing on paper unſtamped, and alſo 20 *l.* with full coſts. 1 *An. ſt.* 2. *c.* 22. *ſ.* 2, 3. The ſame ſtamp not to ſerve twice.

14. Stamps ſpoiled before the writing thereon hath been executed, may, upon oath made thereof before the commiſſioners, be exchanged at the ſtamp office. 5 *G.* 3. *c.* 46. *ſ.* 39. Stamps ſpoiled.

15. By the ſeveral acts, if an perſon ſhall counterfeit the ſtamps, or cauſe or procure them to be counterfeited, or knowingly ſell any paper with ſuch counterfeit ſtamp; he ſhall be guilty of felony without benefit of clergy. Counterfeiting the ſtamps.

16. By the 5 *G.* 3. *c.* 46. If any perſon ſhall fraudulently uſe any of the ſtamps provided by this or any former act; he ſhall be guilty of felony without benefit of clergy. *ſ.* 40. Fraudulently uſing the true ſtamps.

17. For every ſheet almanack, for one year or leſs, printed on one ſide only, ſhall be paid 1 *d.* by the 9 *An. c.* 23. and 1 *d.* more by the 30 *G.* 2. *c.* 19. Stamp duty on almanacks.

For every other almanack for one year, 2 *d.* by the 9 *An. c.* 23. and 2 *d.* more by the 30 *G.* 2. *c.* 19.

And if for more than one year, then 2 *d.* a year, by the 9 *An. c.* 23. but ſo as not to charge any almanack for more than if it were made for three years only. *ſ.* 53. And by the 30 *G.* 2. *c.* 19. a further duty is laid upon every ſuch almanack of 2 *d.* for every ſuch year.

And all books and pamphlets, ſerving chiefly to the purpoſe of an almanack, ſhall be charged as almanacks. 10 *An. c.* 19. *ſ.* 175.

But where an almanack contains more than one ſheet, one ſheet only need to be ſtamped. 9 *An. c.* 23. *ſ.* 26.

And if any perſon ſhall expoſe to ſale any almanack unſtamped, he ſhall be puniſhed as hawkers of unſtamped news papers by the 16 *G.* 2. *c.* 26. (hereafter following), and

and ſhall have the ſame reward for apprehending the offender. 30 *G.* 2. *c.* 19. *ſ.* 26.

Duty on news papers and pamphlets.

18. By the 11 *G.* *c.* 8. for every journal, mercury, or other publick news-paper, ſhall be paid 1 *d.* a ſheet, and ½ *d.* for every half ſheet. And by the 30 *G.* 2. *c.* 19. for every news paper whether on a half ſheet or leſs or more, and not exceeding one ſheet, ½ *d.* more.

For every pamphlet contained in half a ſheet of paper, ½ *d.* 10 *An.* *c.* 19. *ſ.* 101.

Pamphlet larger than half a ſheet, not exceeding a whole ſheet, for every printed copy thereof, 1 *d.* *id.*

Pamphlet above one ſheet, and not exceeding ſix ſheets in *octavo*, or a leſſer page, not exceeding 12 ſheets in *quarto*, or 20 ſheets in *folio*, for every ſheet which ſhall be contained in one printed copy thereof, 2 *s.* *id.*

But news papers printed on a ſheet and an half of paper, ſhall not pay as pamphlets, only 3 *s.* for each impreſſion. 11 *G.* *c.* 8. *ſ.* 13.

(But nothing herein ſhall charge any act of parliament, proclamation, order of council, form of prayer, or other act of ſtate, printed votes, ſchool books, books of devotion, daily accounts of imports and exports, nor weekly bills of mortality. 10 *An.* *c.* 19. *ſ.* 102.)

And if any perſon ſhall write, print, or expoſe to ſale any ſuch pamphlet or news paper (the ſaid pamphlet exceeding one ſheet only excepted) before the paper ſhall be ſtamped; he ſhall forfeit 10 *l.* with full coſts. 10 *An.* *c.* 19. *ſ.* 105.

And a printed copy of every pamphlet containing more than one ſheet, ſhall (within the bills of mortality) in ſix days after printing be brought to the head office, and the title, number of ſheets, and duty ſhall be entred in a book, and the duty thereupon paid to the receiver general, who ſhall give a receipt for the ſame on ſuch printed copy, or the ſame ſhall be ſtamped to denote the payment: Without the bills, it ſhall be brought in 14 days to ſome head collector of the ſtamp duties, who ſhall enter the title, number of ſheets, and duty, which duty ſhall be thereupon paid to the collector, who ſhall give a receipt for the ſame on ſuch printed copy. 10 *An.* *c.* 19. *ſ.* 111.

And if any ſuch pamphlet containing more than one ſheet, ſhall be printed or publiſhed, and the duty not paid, and title regiſtred, and one copy ſtamped where required ſo to be, within the times above limited; the author, printer, and publiſher, and all other perſons concerned, ſhall

ſhall loſe all property therein, and in every copy thereof, and ſhall alſo forfeit 20 *l.* with full coſts. *id.* 112.

And no perſon ſhall expoſe to ſale any ſuch pamphlet, without the name and place of abode of ſome known perſon, by or for whom it was printed or publiſhed, written or printed thereon; on pain of 20 l. *id. ſ.* 112.

And pamphlets unſold ſhall be cancelled by the commiſſioners, and the like number of other ſheets ſtamped *gratis* ſhall be changed for them. *id. ſ.* 114.

And two juſtices may hear and determine offences in relation to pamphlets or news papers on this act, in like manner as above is mentioned; and mitigate the penalty, ſo as they do not reduce it lower than one fourth part, over and above the coſts: and where goods of the offender cannot be found, may commit him to priſon till paid. *ſ.* 120.

And by the 16 *G.* 2. *c.* 26. If any perſon ſhall ſell, or expoſe to ſale, any news paper, or any book, pamphlet, or paper, deemed to be a news paper, unſtamped; any juſtice of the peace may commit him (being convicted before him, by confeſſion, or oath of one witneſs) to the houſe of correction for any time not exceeding three months: And any perſon may apprehend and carry him before ſuch juſtice: And on producing a certificate of ſuch conviction, under the hand of ſuch juſtice (which he ſhall give without fee), ſhall have a reward of 20 *s.* to be paid by the receiver general of the ſtamp duties. *ſ.* 5.

Duty on advertiſements in news papers.

19. For every advertiſement in the gazette, or other printed paper, publiſhed weekly or oftner, ſhall be paid 1 *s.* by the 10 *An.* *c.* 19. *ſ.* 101. and 1 *s.* more by the 30 *G.* 2. *c.* 19. *ſ.* 1.

And for every advertiſement contained in or publiſhed with any paper or pamphlet, yearly, monthly, or at any interval of time exceeding one week, 2 s. 30 *G.* 2. *c.* 19. *ſ.* 1.

And the ſaid duty on advertiſements ſhall be paid, within 30 days after the printing or publication, to the receiver general or his deputy, within the bills; and elſewhere to the next adjacent head officer: on pain of treble duty with full coſts. *ſ.* 118.

And no ſtamps ſhall be delivered out for printing any pamphlet or any publick news, to be contained in one ſheet or any leſſer piece of paper; unleſs the perſon applying for the ſame ſhall firſt give ſecurity to his majeſty for payment of the ſaid duties on advertiſements to be printed thereon. 5 *G.* 3. *c.* 46. *ſ.* 8.

But nothing herein ſhall extend to any ſingle advertiſement printed by itſelf. *ſ.* 102.

Duty on cards and dice.

20. Laſt of all, it is thought proper to inſert here the regulations concerning the duties on cards and dice; they being likewiſe under the management of the commiſſioners of the ſtamp duties; and not of ſmall conſideration, ſince a man may be guilty of offences even with reſpect to theſe, for which he ſhall loſe his life.

(1) By the 10 *An. c.* 19. No playing cards or dice ſhall be imported. *ſ.* 167.

(2) For every pack of cards made in *Great Britain*, ſhall be paid 6 *d.* 9 *An. c.* 23. and 6 *d.* more, by the 29 *G.* 2. *c.* 13.

And for every pair of dice 5 *s.* 9 *An. c.* 23. and 5 *s.* more, by the 29 *G.* 2. *c* 13.

(3) And all pieces of ivory, bone, or other matter made or uſed for any game or play, with any ſpots or other marks thereon, to denote any chance, ſhall be deemed dice. 10 *An. c.* 19. *ſ.* 168.

(4) All makers of cards or dice, before they begin to make them, ſhall give notice in writing of the houſe or place where they intend to make them, to the commiſſioners of the ſtamp duties, or their officer next adjacent, on pain of 50 l. 9 *An. c.* 23. *ſ.* 41. And alſo all the cards, dice, materials, and utenſils ſhall be forfeited. 10 *An. c.* 19. *ſ.* 166.

(5) And every maker of cards ſhall ſend to the commiſſioners a ſufficient quantity of paper, in order to have as many aces of ſpades impreſſed thereon as ſuch maker ſhall deſire; and every pack of cards ſhall have one ſuch ace ſo impreſſed: And the commiſſioners ſhall cauſe a ſtamp to be prepared, with ſuch device as they ſhall think proper, to denote the ſaid ace of ſpades, as well in every pack made for uſe in Great Britain, as in every pack made for exportation; ſo as in ſuch device there be ſome diſtinguiſhing mark, between cards for home, and cards for foreign conſumption. 5 *G.* 3. *c.* 46. *ſ.* 9.

(6) And the maker ſhall alſo ſend to the commiſſioners or their officers, jews or wrappers made for incloſing cards for uſe in Great Britain, with his name, and any other particular word or thing printed thereon, as the commiſſioners ſhall direct; in order that the ſame may be ſtamped and delivered again, from time to time, to ſuch maker, as occaſion ſhall require: And the commiſſioners ſhall denote one of the ſixpenny duties charged on cards in

Great Britain, on ſuch jew or wrapper. 5 *G.* 3. *c.* 46. *ſ.* 10.

(7) And the officers may enter any houſe or place, where cards or dice are made, ſold, or expoſed to ſale, or ſuſpected to be privately made, or into any publick gaming houſe, room, or place, and there ſearch and ſee what quantity of cards or dice ſhall be making, and whether they be ſtamped; and if the owner or occupier ſhall refuſe entrance or liberty of ſearch, he ſhall forfeit 10 l. 10 *An. c.* 19. *ſ.* 169.

(8) And if the commiſſioners be informed, or have cauſe to ſuſpect, that any perſon makes cards or dice in a place not entred, on affidavit thereof by the informer before a juſtice of the peace declaring the grounds of his ſuſpicion; the officer may in the day time, and in the preſence of a conſtable by warrant of ſuch juſtice break open the door, or any part of ſuch private place, and enter, and ſeize all ſuch cards, dice, tools, or materials; and if not replevied in five days, they ſhall be forfeited and ſold. 6 *G. c.* 21. *ſ.* 59.

(9) And no materials begun to be wrought for cards or dice, ſhall be removed until they be compleatly made, or the duties paid; on pain of double duty. 10 *An. c.* 19. *ſ.* 166.

(10) And no maker of cards or dice, ſhall remove the ſame from the place of making, until ſuch mark upon the dice, and ſuch ſeal upon the paper and thread incloſing every pack of cards ſhall be put thereon, as the commiſſioners ſhall appoint; on pain of forfeiting the ſame, and treble value. 9 *An. c.* 23. *ſ.* 41.

(11) And every maker of cards and dice, who ſhall endeavour to defraud the king by any concealment, ſhall forfeit 20 l. 9 *An. c.* 23. *ſ.* 43.

(12) The makers of cards and dice ſhall once in every 28 days make entry upon oath with the proper officer, of all the cards and dice by them made within the ſaid time; on pain of 20 l. 9 *An. c.* 23. *ſ.* 42.

And the card maker ſhall be obliged at the reſpective times of entring, to give bond with ſurety of treble the duty, for payment of the duty in ſix weeks. 6 *G. c.* 21. *ſ.* 57.

13. And the maker of cards and dice ſhall once in every ſix weeks clear off the duties; on pain of double duty. 9 *An. c.* 23. *ſ.* 42.

And if the card maker ſhall on entry pay down the duty, he ſhall have the like allowance as for preſent payment

of the ſtamp duties by the 1 *An. ſt.* 2. *c.* 22. (That is, he ſhall have an abatement after the rate of 6 l. *per cent. per annum*, for ſix months.) 6 *G. c.* 21. *ſ.* 58.

(14) And no cards or dice ſhall be expoſed to ſale, or uſed in play in any public gaming houſe, unleſs the paper and thread incloſing the ſame ſhall have been reſpectively ſealed and ſtamped, and unleſs one of the cards of each pack ſhall be alſo ſtamped on the ſpotted ſide; on pain that every perſon who ſhall expoſe to ſale any ſuch cards or dice not ſtamped, ſhall forfeit for every ſuch pack, and for every one of ſuch dice, 5 *l.* with coſts. 10 *An. c.* 19. *ſ.* 162.

(15) And by the 6 *G. c.* 21. if any perſon ſhall take off the ſtamp of playing cards (in order to put it on a new pack), or ſquare or new ſpot any dice which have been played with, or ſhall incloſe any pack of cards in an outſide paper which hath been uſed before, or ſhall ſell any cards not ſtamped, and incloſed in paper and thread ſealed and ſtamped; he ſhall forfeit 10 *l.* with full coſts. *ſ.* 55.

(16) And by the 5 *G.* 3. *c.* 46. If any maker ſhall uſe, in the making up of any pack of cards, any ace of ſpades, jew, or wrapper, that has been uſed before; he ſhall forfeit 20 l. *ſ.* 13.

(17) And if any perſon ſhall ſell or buy any ſuch ace of ſpades, jew, or wrapper, in order to be made uſe of for the incloſing any pack or parcel of cards; he ſhall forfeit 20 *l.* And if either the buyer or ſeller ſhall inform againſt the other; his evidence ſhall be admitted, and he ſhall be indemnified. 5 *G.* 3. *c.* 46. *ſ.* 15.

(18) And if any perſon ſhall ſell any cards called waſte cards, unleſs before ſale he mark the back or plain ſide of every ſuch card, ſo as to render it unfit to be uſed in playing; he ſhall forfeit 20 l. 29 *G.* 2. *c.* 13. *ſ.* 10.

(19) If any pack or part thereof ſhall be damaged in making; then, on oath made thereof by the maker before three commiſſioners, he ſhall be allowed another ace of ſpades, inſtead of that which was ſpoiled. 5 *G.* 3. *c.* 46. *ſ.* 12.

(20) And if any perſon ſhall counterfeit the ſtamps on cards or dice, or on any jew, wrapper, or thread incloſing the ſame; or knowingly ſell the ſame with a counterfeit ſtamp; or fraudulently uſe any of the ſtamps provided by the commiſſioners; he ſhall be guilty of felony without benefit of clergy. 10 *An. c.* 19. *ſ.* 163. 29 *G.* 2. *c.* 13. *ſ.* 5. 5 *G.* 3. *c.* 46. *ſ.* 40.

(21) Ne-

(21) Nevertheleſs it ſhall be lawful to remove cards or dice from the place where they are made, without ſtamping or paying duty, provided that within a month after they are made, and before they be removed, bond of double the duty be given, that they ſhall be exported and not relanded. 10 *An.* *c.* 19. *ſ.* 170. 5 *G.* *c.* 19. *ſ.* 48.

(22) But cards intended for exportation ſhall before packing for exportation be incloſed in paper and thread, in packs or parcels, and be marked on the ſpotted ſide, in ſuch manner as the commiſſioners ſhall direct; and if any perſon ſhall ſell or expoſe to ſale to be uſed in *Great Britain*, or ſhall uſe or permit to be uſed in any publick gaming houſe any cards ſo marked as for exportation; he ſhall forfeit 20 *l.* for every ſuch pack. 29 *G.* 2. *c.* 13. *ſ.* 6.

(23) If any perſon ſhall re-land, or procure to be relanded, any parcel of cards, after having been entred and ſhipped for exportation; he ſhall forfeit 50 *l.* But if any perſon concerned ſhall inform againſt an accomplice; he ſhall be admitted to give evidence, and be indemnified. 5 *G.* 3. *c.* 46. *ſ.* 16, 17.

Star. See **Bent.**

Starch. See **Exciſe.**

Stock of the county. See **County rate.**

Stocks.

IT is ſaid, that every vill of common right is bound to provide a pair of ſtocks. 2 *Haw.* 73.

And the conſtable by the common law, may confine offenders in the ſtocks, by way of ſecurity, but not by way of puniſhment.

But by divers ſtatutes, the ſtocks is alſo appointed for the puniſhment of offenders in ſundry caſes, after conviction.

Stock of companies.

IF any perſon ſhall forge or counterfeit any power or authority to transfer any ſhare of any capital ſtock of any company eſtabliſhed by act of parliament, or to receive the ſame, or ſhall forge or counterfeit the name of any proprietor, or perſon intitled to a dividend, or ſhall fraudulently demand, or endeavour to have any ſuch ſhare received by virtue of ſuch counterfeit inſtrument, or ſhall perſonate any proprietor of any ſuch ſhare of ſuch ſtock; he ſhall be guilty of felony without benefit of clergy. 8 *G. c.* 22. *ſ.* 1.

Stolen goods. See **Search warrant, Reſtitution.**

Stores.

Imbezilling to the value of 20 *s.*

1. IF any perſon having the charge or cuſtody of any of the king's armour, ordnance, ammunition, ſhot, powder, or habiliments of war, or of any victuals provided for victualling the army, ſhall for lucre or gain, wittingly, adviſedly, and of purpoſe, to hinder his majeſty's ſervice, imbezil, purloin, or convey away the ſame to the value of 20 *s.* or ſhall felonioufly ſteal or imbezil any of his majeſty's ſails, cordage, or any other of his majeſty's naval ſtores, to the like value of 20 *s.* he ſhall (on proſecution within a year) be adjudged guilty of felony without benefit of clergy. 31 *El. c.* 4. 22 *C.* 2. *c.* 5.

Under the value of 20 *s.*

2. And any of the principal officers or commiſſioners of the navy, may iſſue warrants to ſearch for the ſame, and puniſh the offenders by fine not exceeding 20 *s.* or impriſonment not exceeding one week, the value of the goods not exceeding 20 *s.* and if the offence requires a higher puniſhment, may commit him till he find ſureties to appear in the exchequer, or other court where the king ſhall queſtion him for the ſame, within one year, on proceſs

duly ſerved for that purpoſe on ſuch offender. 1 *G. ſt.* 2. *c.* 25. *ſ.* 3.

3. And every perſon who ſhall counterfeit the hand of any officer of the navy to any paper whereby his majeſty's naval treaſure may be diſpoſed of, or knowingly produce the ſame, he may be bound over by the ſaid officers and commiſſioners, or any of them, until he find ſurety to appear at the next aſſizes or quarter ſeſſions, to be there proceeded againſt according to law. 1 *G. ſt.* 2. *c.* 25. *ſ.* 6. Counterfeiting a naval officer's hand.

4. No perſon, other than perſons authorized by contracting with his majeſty's officers, ſhall make any ſtores of war or naval ſtores with the king's mark, that is cordage of 3 inches and upwards with a white thread laid the contrary way, or any ſmaller cordage with a twine in lieu of white thread laid the contrary way, or any canvaſs with a blue ſtreak in the middle, or any other ſtores with the broad arrow: on pain of forfeiting the ſame, and 200 *l.* with coſts (on conviction at the aſſizes or ſeſſions, 17 *G.* 2. *c.* 40. *ſ.* 10, 11.) half to the king, and half to the informer. 9 & 10 *W. c.* 41. Making ſtores with the king's mark.

And ſuch perſon in whoſe cuſtody ſuch goods or ſtores ſo marked (or any timber, thick ſtuff, or plank, marked with the broad arrow, 9 *G. c.* 8. *ſ.* 3.) ſhall be found, ſhall forfeit the ſame and 200 *l.* with coſts in like manner, and be impriſoned till paid, unleſs he ſhall upon trial produce a certificate from three principal officers of the navy, expreſſing the quantity, and on what occaſion he came by them. 9 & 10 *W. c.* 41.

But the judge or juſtices may mitigate the penalty as they ſhall ſee cauſe, and may commit the offender to gaol till payment, or may puniſh him corporally by cauſing him to be publickly whipped, or committed to ſome publick workhouſe to be kept to hard labour for 6 months or a leſs time. 9 *G. c.* 8. *ſ.* 4.

5. Imbezilling or purloining of armour, ſtores, naval proviſions, and other habiliments of war, are excepted out of the general pardon of the 20 *G.* 2. *c.* 52. Pardon.

Stray. See **Eſtray.**

Subornation. See **Perjury.**

Sunday. See **Lord's Day.**

Surety for the peace.

OUT of the *Latin* word *pax*, the *Normans* formed their *paix*, and we (out of that) our *peace*. Lamb. 5.

Surety for the peace is the acknowledging a recognizance, or bond, to the king, taken by a competent judge of record, for the keeping the peace. *Dalt. c.* 116.

And this surety of the peace, every juſtice of the peace may take and command by a twofold authority: 1. As a miniſter, commanded thereto by a higher authority: as when a writ of *ſupplicavit*, directed out of the chancery or king's bench, is delivered to him. 2. As a judge, and by virtue of his office, derived from his commiſſion. *Dalt. c.* 116.

Concerning which I will ſhew,

I. For what cauſe ſurety of the peace ſhall be granted.
II. At whoſe requeſt it ſhall be granted.
III. Againſt whom it ſhall be granted.
IV. In what manner it ſhall be granted.
V. How the peace warrant may be ſuperſeded.
VI. How the peace warrant ſhall be executed.
VII. What ought to be the form of a recognizance of the peace.
VIII. How ſuch recognizance ſhall be certified.
IX. How ſuch recognizance may be forfeited.
X. How the recognizance being forfeited ſhall be proceeded on.
XI. How ſuch recognizance may be diſcharged.

I. For what cauſe ſurety of the peace ſhall be granted.

1. By the commiſſion of the peace, one or more juſtices have power *to cauſe to come before them, all thoſe who to any of the king's people concerning their bodies, or the firing of their houſes, have uſed threats, to find ſufficient ſecurity for the peace*

peace or their good behaviour towards the king and his people; and if they shall refuse to find such security, to cause them in the king's prisons to be safely kept, until they shall find such security.

2. Upon which Mr. *Hawkins* observes, that it seemeth clear, that wherever a person has just cause to fear, that another will burn his house, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him such mischief, he may demand the surety of the peace against such person, and that every justice of the peace is bound to grant it, upon the party's giving him satisfaction upon oath, that he is actually under such fear, and that he has just cause to be so, by reason of the other's having threatened to beat him, or lain in wait for that purpose; and that he doth not require it out of malice, or for vexation. 1 *Haw.* 127.

3. Also it seems the better opinion, that he who is threatened to be *imprisoned* by another, has a right to demand the surety of the peace; for every unlawful imprisonment is an assault and wrong to the person of a man. And the objection, that one wrongfully imprisoned may recover damages in an action, and therefore needs not the surety of the peace, is as strong in the case of battery as imprisonment; and yet there is no doubt, but that one threatened to be beaten, may demand the surety of the peace. 1 *Haw.* 127.

4. But if the justice shall perceive that surety is demanded merely of malice, or for vexation only, without any just cause of fear, it seemeth he may safely deny it. As in common experience we find it, that where a person shall upon a just cause come and crave the peace against another, and hath it granted to him; when such other person shall come before the justice, he likewise will crave the peace against the former, and will perhaps surmise some cause; but yet will nevertheless be content to surcease his suit and demand, so as the other will relinquish to have the peace against him: Here the justice shall do well not to be too forward in granting the peace thus required by the latter, but to persuade him, and to shew him the danger of his oath which he is to take; but yet if he will not be persuaded, but will take his oath, that he is in fear, where indeed he neither doth fear, nor hath cause to fear, this oath shall discharge the justice, and the fault shall remain on such complainant. *Dalt. c.* 116.

5. Also, if a man will require the peace, because he is *at variance*, or in *suit* with his neighbour, it shall not be granted. *Dalt. c.* 116.

6. Alſo, Mr. *Lambard* ſays, he takes it to be ſomewhat clear, that a juſtice may not by the commiſſion award a precept of the peace, in behalf of a man that will require it, becauſe he feareth that he will do harm to his *ſervants* or *cattle*. Lamb. 83.

And Mr. *Dalton* ſays, where a man is in fear that another will hurt his ſervants, or his cattle, or other goods, this ſurety of the peace ſhall not be granted by the juſtice. But in this caſe *Fitzherbert* ſaith, the party may have a ſpecial writ out of the chancery directed to the ſheriff, that he ſhall cauſe ſuch perſon to find ſurety, that he ſhall do no hurt or damage to the other man in his body, or to his ſervants or goods; and if he will not find ſurety, that then he ſhall arreſt and detain him in priſon until he ſhall find ſurety. *Dalt. c.* 116.

And the reaſon why a man may not have ſureties of the peace againſt another, for that he feareth he will do harm to his *ſervants*, ſeemeth to be, becauſe it ſhould be the *ſervant*'s fear in ſuch caſe, and not the *maſter*'s; and the ſervant's own oath before the juſtice is neceſſary. And as to his *goods*, it ſeemeth clear, that no ſureties of the peace ought to be granted in that caſe; for the recognizance of the peace when taken, is only that the party ſhall keep the peace towards the king and all his liege people.

But Mr. *Dalton* ſays, that if a man ſhall threaten to hurt his *wife*, or *child*, he thinks he may crave the peace at the juſtice's hands, by the words of the commiſſion, and that the juſtice ought to grant it. *Dalt. c.* 116.

7. Note alſo, the ſurety of the peace ſhall not be granted, but where there is a fear of ſome preſent or future danger, and not merely for a battery or treſpaſs that is paſt, or for any breach of the peace that is paſt: for this ſurety of the peace is only for the ſecurity of ſuch as are in fear: But the party wronged may puniſh the offender by indictment; and the juſtice, if he ſee cauſe, may bind over the affrayer. *Dalt. c.* 116. That is, he may bind him over to anſwer unto the indictment.

II. At whoſe requeſt it ſhall be granted.

1. As to this, Mr. *Hawkins* ſays, It ſeems to be agreed at this day, that all perſons whatſoever, under the king's protection, being of *ſane memory*, whether they be natural and good ſubjects, or *aliens*, or *excommunicate*, or attainted of *treaſon*, have a right to demand ſurety of the peace. And it is certain, a *wife* may demand it againſt her huſband threat-

threatening to beat her outrageouſly, and that a *huſband* alſo may have it againſt his wife. 1 *Haw.* 126, *Crom.* 118.

Upon which Maſter *Crompton* obſerveth, that if the wife in ſuch caſe cannot find ſureties, ſhe ſhall be committed; and ſo, ſays he, a man may be rid of a ſhrew. *Crom.* 118.

2. And Mr. *Dalton* ſays, an infant under the age of 14 years, may demand this ſurety, and it ſhall be granted him. *Dalt. c.* 117.

3. But as to a perſon of *non ſane memory*, Mr. *Dalton* ſays, this ſurety ſhall neither be granted againſt him nor to him upon his own requeſt; but yet if there ſhall be cauſe, the juſtice ought to provide for his ſafety. *Dalt. c.* 117.

III. Againſt whom it ſhall be granted.

There ſeems to be no doubt, but that it ought, upon a juſt cauſe of complaint, to be granted by any juſtice of the peace, againſt any perſon whatſoever, under the degree of nobility, being of ſane memory, whether he be a magiſtrate or private perſon, and whether he be of full age, or under age. But infants and femes covert ought to find ſecurity by their friends, and not to be bound themſelves. And the ſafeſt way of proceeding againſt a *peer*, is by complaint to the court of chancery or king's bench. 1 *Haw.* 127.

IV. In what manner it ſhall be granted.

1. It ſeemeth certain, that if the perſon to be bound be in the preſence of the juſtice, he may be immediately committed, unleſs he offers ſureties; and from hence it follows *a fortiori*, that he may be commanded by word of mouth to find ſureties, and committed for his diſobedience: But it is ſaid, that if he be abſent, he cannot be committed without a warrant from ſome juſtice in order to find ſureties, and that ſuch warrant ought to be under ſeal, and to ſhew the cauſe for which it is granted, and at whoſe ſuit (that the party may provide his ſureties), and that it may be directed to any indifferent perſon. 1 *Haw.* 128.

2. The juſtice may make the warrant, to bring the party before himſelf or ſome other juſtice, or he may make it to bring the party before himſelf only; for he that maketh the warrant for the moſt part hath the beſt knowledge of the matter, and therefore he is the fitteſt to do juſtice in the caſe. 5 *Co.* 59.

3. As

3. As to the granting proceſs of the peace or good behaviour, out of the chancery or king's bench, it is enacted by the 21 *J.* *c.* 8. that it ſhall not be granted but upon motion in open court, and declaration in writing and upon oath, to be exhibited by the party deſiring ſuch proceſs, of the cauſes for which ſuch proceſs ſhall be granted; the motion and declaration to be mentioned on the back of the writ. And if it ſhall afterwards appear, that the cauſes are untrue, the court may order coſts to the party grieved, and commit the offender till paid.

V. How the peace warrant may be ſuperſeded.

1. It is ſaid, that if one who fears that the ſurety of the peace will be demanded againſt him, find ſureties before any juſtice of the ſame county, either before or after a warrant is iſſued againſt him, he may have a *ſuperſedeas* from ſuch juſtice, which ſhall diſcharge him from arreſt from any other juſtice, at the ſuit of the ſame party, for whoſe ſecurity he has given ſuch ſurety. 1 *Haw.* 129.

2. In which *ſuperſedeas* it is not neceſſary to name either the ſureties, or the ſums in which they are bound; but yet it is the better form to expreſs them both. *Dalt.* *c.* 118.

3. Alſo, it is ſaid, that an appearance upon a recognizance for the peace may be ſuperſeded, by finding ſureties in the chancery or king's bench, and purchaſing a writ teſtifying the ſame; but this practice having been often abuſed, it is enacted by the 21 *J.* *c.* 8. that no writs of *ſuperſedeas* ſhall be granted out of the chancery or king's bench, but upon motion in open court, and on ſuch ſufficient ſureties as ſhall appear on oath to the court, to be aſſeſſed in the ſubſidy book at 5 *l.* lands, or 10 *l.* goods, and unleſs it ſhall alſo firſt appear to the court, that the proceſs of the peace or good behaviour is proſecuted againſt him, deſiring ſuch *ſuperſedeas bona fide* by ſome party grieved in that court, out of which the *ſuperſedeas* is deſired to be awarded. 1 *Haw.* 129.

VI. How the peace warrant ſhall be executed.

1. It can be executed only by the perſons to whom it is directed, or ſome of them, unleſs it be directed to the ſheriff, who may either by parol, or by precept in writing, authorize an officer ſworn and known, to ſerve it, but

but cannot impower any other person without a precept in writing. 1 *Haw.* 128.

2. It seems generally agreed, that where a person authorized by warrant of a justice of the peace, to compel a man who is sheltered in an house, to find sureties for the peace or good behaviour, is denied quietly to enter into it, he may justify breaking open the doors, in order to take him; but he must first signify to those in the house the cause of his coming, and request them to give him admittance. 2 *Haw.* 86.

3. If the warrant specially direct that the party shall be brought before the justice who made it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any justice of such place, the officer has the election to bring him before what justice he pleaseth, and may carry him to prison for refusing to find surety before such justice. 1 *Haw.* 128.

4. And if the party is carried before another justice, and not before him who issued the warrant, such other justice must take the surety, and bind him by recognizance in all points as the form of the precept doth require. And thereupon such other justice, having so taken surety of the peace, may and ought upon request, to make his *supersedeas* to all officers, and to all other justices of the same county; and thereby the said party shall be discharged from finding other surety, and from any other arrest for the same cause. But by such *supersedeas*, the other justice cannot discharge the warrant of the first justice, until the party be bound indeed, nor give any other day to the party to appear. *Dalt. c.* 118.

5. If the warrant be in the common form, requiring the officer to cause the party complained of to come before the justice to find sufficient surety, and if he shall refuse so to do, to convey him immediately to prison, without expecting any further warrant, until he shall willingly do the same, the officer who serves it, before he makes any arrest, ought first to require the party to go with him, and find sureties according to the purport of the warrant; but upon refusal to do either, that is, either to go before the justice, or to find sureties, he may carry him to the gaol by force of the same warrant, without more. 1 *Haw.* 128. *Dalt. c.* 118.

And yet the constable, or officer, may bring him in that case before the justice; and if he refuses there to give sureties, he may commit him without any farther warrant or *mittimus*. 2 H. H. 112.

Never-

Nevertheleſs, notwithſtanding theſe great authorities, it may not be convenient for the juſtice, to leave ſo much to the conſtable's judgment, as to determine what ſhall or ſhall not be deemed a refuſal to find ſuch ſureties; for that the conſtable is conſtituted a judge in ſuch caſe by no law. And much leſs doth it ſeem adviſeable, to require in the warrant, as is uſual, that the conſtable ſhall carry the party to gaol, if he ſhall refuſe to find *ſufficient* ſureties; for it doth not appear how the conſtable can any way be deemed a competent judge of that; for it is certain, that he cannot adminiſter an oath to ſuch ſureties, or others, whereby to inform himſelf of ſuch ſufficiency.

6. If the officer do arreſt the party, and do not carry him before the juſtice to find ſureties; or upon the refuſal of the party, if the officer ſhall arreſt him, and do not carry him to the gaol, in both theſe caſes the officer is puniſhable by the juſtices for this neglect, by indictment and fine at their ſeſſions: And alſo the party arreſted may have his action of falſe impriſonment for the arreſt; for where the officer doth not purſue the effect of his warrant, his warrant will not excuſe him of that which he hath done. *Dalt. c.* 118.

7. When the party cometh before the juſtice, he muſt offer ſureties, or elſe the juſtice may commit him; for the juſtice needeth not to demand ſurety of him. *Dalt. c.* 118, 169.

8. If the juſtice was deceived in the ſufficiency of the ſureties, he or any other juſtice may afterwards compel the party to find and put in other ſufficient ſureties, and may take a new recognizance for the ſame. *Dalt. c.* 116, 119.

9. But if the ſureties die, the party principal ſhall not be compelled to find new ſureties. *Dalt. c.* 119. Becauſe their executors or adminiſtrators are liable.

10. Alſo if a man, that was bound to keep the peace, hath broken his bond, the juſtices ought of diſcretion to bind him anew. *Lamb* 78.

But not until he be thereof convicted by due courſe of law; for before conviction, he ſtandeth indifferent, whether he hath forfeited his recognizance or not. *Crom.* 125.

VII. What

VII. What ought to be the form of a recognizance for the peace.

1. The recognizance, which the juſtice takes for the keeping of the peace, is rather of congruity, than by any expreſs authority given either by the common law, or by ſtatute. *Dalt. c.* 168.

2. If it is taken in purſuance of a writ of *ſupplicavit*, it muſt be wholly governed by the directions of ſuch writ: But if it be taken before a juſtice, upon a complaint below, it ſeems that it may be regulated by the diſcretion of ſuch juſtice, both as to the number and ſufficiency of the ſureties, and the largeneſs of the ſum, and the continuance of the time for which the party ſhall be bound. And it hath been ſaid, that a recognizance to keep the peace as to any perſon, for a year, or for life, or without expreſſing any certain time (in which caſe it ſhall be intended for life) or without fixing any time or place for the party's appearance, or without binding him to keep the peace againſt all the king's people in general, is good. 1 *Haw.* 129.

3. However it ſeems to be the ſafeſt way, to bind the party to appear at the next ſeſſions of the peace, and in the mean time to keep the peace as to the king and all his liege people, eſpecially as to the party, according to the common form of precedents. 1 *Haw.* 129.

VIII. How ſuch recognizance ſhall be certified.

If it be taken by force of a writ of *ſupplicavit*, it needs not be certified till the juſtice receive a writ of certiorari to that purpoſe. But if it be taken upon a complaint below, it muſt be certified, ſent, or brought to the next ſeſſions, by force of the ſtatute of the 3 *H.* 7. *c.* 1. that the party ſo bound may be called. 1 *Haw.* 130.

IX. How ſuch recognizance may be forfeited.

1. There are divers things which may be done againſt the peace, and divers offences for which an indictment againſt the peace will lie; and yet the committing or doing ſuch offence or act ſhall be no forfeiture of the recognizance

nizance for the peace: for that the act that ſhall cauſe a forfeiture of ſuch recognizance muſt be done or intended unto the *perſon* as is aforeſaid, or in terror of the people. Therefore to enter into lands, where he ought to bring his action; or to diſſeiſe another of his lands; or to enter into lands or tenements with force, being without offer of violence to any man's perſon, and without publick terror; or to do a treſpaſs in another man's corn or graſs; or take away another man's goods wrongfully, ſo it be not from his perſon; or to ſteal another man's horſe, or other goods feloniouſly, being not from his perſon: All theſe, and the like, are breaches of the peace, and yet theſe will make no breach of this recognizance, nor breach of the peace within the meaning of the commiſſion of the peace. *Dalt. c.* 121.

2. More particularly; The recognizance is forfeited, if the party make default of appearance, and the ſame default ſhall be recorded. 3 *H.* 7. *c.* 1.

However, if the party have any excuſe for his not appearing, it ſeems that the ſeſſions is not bound peremptorily to record his default, but may equitably conſider of the reaſonableneſs of ſuch excuſe. 1 *Haw.* 130.

And Mr. *Dalton* ſays, in caſe of the ſickneſs of the party, ſo that he cannot appear, he has known that the juſtices, upon due proof thereof have forborn to certify or record ſuch forfeiture or default: and that they have taken ſureties for the peace of ſome friends of his preſent in court, until the next ſeſſions; for that the principal intent of the recognizance was but the preſervation of the peace. But he queries how this is warrantable by their oath. *Dalt. c.* 120.

3. Alſo, there is no doubt, but that it may be forfeited by any actual violence to the perſon of another, whether it be done by the party himſelf, or by others through his procurement; as manſlaughter, rape, robbery, unlawful impriſonment, and the like. 1 *Haw.* 130.

4. Alſo it hath been holden, that it may be forfeited by any treaſon againſt the king's perſon, and alſo by any unlawful aſſembly in terror of the people, and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his preſence threatening to beat him. 1 *Haw.* 130.

Otherwiſe it is if the party be abſent; and yet if the party ſo bound ſhall threaten to kill or beat a perſon who is abſent, and after ſhall lie in wait for him to kill or beat him,

him, this is a forfeiture of the recognizance. *Dalt. c.* 121.

5. However, it ſeems that it ſhall not be forfeited by bare words of heat and choler, as the calling a man a knave, teller of lies, raſcal, or drunkard; for though ſuch words may provoke a cholerick man to break the peace, yet they do not directly challenge him to it, nor does it appear that the ſpeaker deſigned to carry his reſentment any farther: And it hath been ſaid, that even a recognizance for the good behaviour ſhall not be forfeited for ſuch words; from whence it follows *a fortiori*, that a recognizance for the peace ſhall not. 1 *Haw.* 130.

6. Alſo, there are ſome actual aſſaults on the perſon of another, which do not amount to a forfeiture of ſuch recognizance; as if an officer, having a warrant againſt one who will not ſuffer himſelf to be arreſted, beat or wound him in the attempt to take him; or if a parent in a reaſonable manner chaſtiſe his child; or a maſter his ſervant, being actually in his ſervice at the time; or a ſchoolmaſter his ſcholar; or a gaoler his priſoner; or even a huſband his wife, as ſome ſay; or if one confine a friend who is mad, and bind and beat him, in ſuch manner as is proper in his circumſtances; or if a man force a ſword from one who offers to kill another therewith; or if a man gently lay his hands upon another, and thereby ſtay him from inciting a dog againſt a third perſon; or if a man beat another (without wounding him, or throwing at him a dangerous weapon) who wrongfully endeavours with violence to diſpoſſeſs him of his land or goods, or the goods of another delivered to him to be kept, and will not deſiſt upon his laying his hands gently on him, and diſturbing him; or if a man beat, or as ſome ſay, wound, or maim one who makes an aſſault upon his perſon, or that of his wife, parent, child, or maſter, eſpecially if it appear that he did all he could to avoid fighting before he gave the wound; or if a man fight with or beat one who attempts to kill any ſtranger; or if a man even threaten to kill one, who puts him in fear of death, in ſuch a place where he cannot ſafely fly from him; or if one impriſon thoſe whom he ſees fighting, till the heat is over. 1 *Haw.* 130, 131.

X. How the recognizance being forfeited ſhall be proceeded on.

It is ſaid, that the juſtices cannot in any caſe proceed againſt the party, for a forfeiture of his recognizance, either in reſpect of his not appearing, or breaking the peace; but that the recognizance itſelf, with the record of default of appearance, ought to be removed into ſome of the courts at *Weſtminſter*, who ſhall proceed by *ſcire facias* upon ſuch recognizance: And ſo it ought to be, if it be preſented by the jury, or great inqueſt, that the party hath forfeited his recognizance, by breach of the peace. 1 *Haw.* 130. *Dalt. Old Ed. c.* 70.

XI. How ſuch recognizance may be diſcharged.

1. He who is bound to the peace, and to appear at a certain day, muſt appear at that day, and record his appearance, although he who craved the peace cometh not to deſire that it may be continued; otherwiſe the recognizance cannot be diſcharged. *Dalt. c.* 120.

2. If the recognizance be made to keep the peace generally, without any time or day limited, it ſhall be conſtrued to be during the party's life; and this the juſtice may do upon reaſonable cauſe: but if ſuch ſurety be ſo taken, during the offender's life, neither the king, nor the juſtice, nor the party, can releaſe or diſcharge it: And therefore the juſtice muſt be well adviſed, how he granteth ſuch ſurety. *Dalt. c.* 119, 120.

3. But it ſeems to be agreed, that it may be diſcharged by the death or demiſe of the king in whoſe reign it was taken, or of the principal party who was bound thereby, if it were not forfeited before. 1 *Haw.* 129.

4. Alſo it hath been holden, that it may be diſcharged by the releaſe of the party at whoſe complaint it was taken, being certified together with it; but this may juſtly be queſtioned, becauſe the recognizance is not to the ſubject but to the king; and conſequently cannot be diſcharged by the ſubject, who is not a party to it: however, ſuch a releaſe will be a good inducement to the court, to which ſuch a recognizance ſhall be certified, to diſcharge it. 1 *Haw.* 129.

5. And

5. And if a man be bound to keep the peace towards the king and all his people, but not towards any perſon certain, and to appear at ſuch a ſeſſions, the court at that ſeſſions may make proclamation, that if any man can ſhew cauſe, why the peace granted againſt ſuch a one ſhall be continued, he ſhall ſpeak; and if no perſon cometh to demand the peace againſt him, or to ſhew cauſe why it ſhould be continued, then the court may diſcharge him. But if a man be bound as aforeſaid, and *eſpecially to keep the peace towards a certain perſon*, there though ſuch perſon cometh not to deſire the peace may be continued, yet the court by their diſcretion may bind him over till the next ſeſſions, and that may be to keep the peace againſt that perſon only if they ſhall think good; for it may be that the perſon who firſt craved the peace is ſick, or otherwiſe letted, ſo as he cannot come to that ſeſſions to demand the continuance of the peace further. *Dalt. c.* 120.

6. Alſo it is certain, that ſuch a recognizance cannot be pardoned or releaſed by the king, before it is broken; becauſe the ſubject hath a kind of intereſt in it; but being forfeited, then the king, and no other, may releaſe and pardon the forfeiture. 1 *Haw.* 129.

And it is ſaid, that the ſureties are not diſcharged by their death; but that their executors or adminiſtrators (as hath been ſaid) do continue bound. 1 *Haw.* 129. *Dalt. c.* 120.

8. Likewiſe, if the party be impriſoned for default of ſureties, and after, he that demandeth the peace againſt him happen to die; it ſeemeth the juſtice may make his liberate or warrant for the delivery of ſuch priſoner, for after ſuch death, there ſeemeth no cauſe to continue the other in priſon. Alſo, any juſtice may, upon the offer of ſuch priſoner, take ſurety of him for the peace, and may thereupon deliver him. *Dalt. c.* 118.

Surety for the good behaviour.

A MAN may be compelled to find ſureties, both for the good behaviour and for the peace; and yet the good behaviour includeth the peace: and he that is bound to the good behaviour, is therein alſo bound to the peace. *Dalt. c.* 122.

This ſurety for the good behaviour being of near affinity to ſurety for the peace, both as to the manner in which it is to be taken, ſuperſeded, and diſcharged, it ſeemeth not to require a particular conſideration, ſave only as to theſe two points:

I. For what miſbehaviour it is to be required.

II. For what it ſhall be forfeited.

I. For what miſbehaviour it is to be required.

1. It doth not appear that the conſervators of the peace at common law had any power as touching the *good behaviour*, further than as it had a relation to the *peace*; and not as it is contra-diſtinguiſhed from it. And it ſeemeth, that the power which the juſtices of the peace do exerciſe at this day, in relation thereto, doth ſolely depend upon the commiſſion of the peace, and the ſtatute of the 34 *Ed.* 3. *c.* 1. (Except in ſome ſpecial inſtances wherein the power of binding to the good behaviour is given to them by particular ſtatutes, which pertain not to this general title.)

2. The words in the commiſſion are theſe: *We have aſſigned you, jointly and ſeverally, and every one of you, our juſtices to keep our peace—and to cauſe to come before you, or any of you, all thoſe who to any one or more of our people, concerning their bodies, or the firing their houſes, have uſed threats, to find ſufficient ſecurity for the peace, or their good behaviour, towards us and our people; and if they ſhall refuſe to find ſuch ſecurity, then them in our priſons, until they ſhall find ſuch ſecurity, to cauſe to be ſafely kept.*

3. The ſtatute of the 34 *Ed.* 3. *c.* 1. as to this matter runs thus: *In every county ſhall be aſſigned for the keeping of the*

the peace, one lord, and with him three or four of the moſt worthy in the county, with ſome learned in the law; and they ſhall have power to reſtrain the offenders, rioters, and all other barators, and to purſue, arreſt, take, and chaſtiſe them according to their treſpaſs or offence; and to cauſe them to be impriſoned and duly puniſhed, according to the law and cuſtoms of the realm, and according to that which to them ſhall ſeem beſt to do by their diſcretions and good adviſement; and alſo to inform them, and to inquire of all thoſe that have been pillars and robbers in the parts beyond the ſea, and be now come again, and go wandring, and will not labour as they were wont in times paſt; and to take and arreſt all thoſe that they may find by indictment, or by ſuſpicion, and to put them in priſon; and to take of all them that be not of good fame, where they ſhall be found, ſufficient ſurety and mainprize of their good behaviour towards the king and his people, and the other duly to puniſh, to the intent the people be not by ſuch rioters or rebels troubled nor endamaged, nor the peace blemiſhed, nor merchants nor others paſſing by the highways of the realm diſturbed, nor put in the peril which may happen of ſuch offenders.

4. This ſtatute ſeems to have had in view chiefly the diſorders to which the country was then liable, from great numbers of diſbanded ſoldiers, who having ſerved abroad in the wars of that victorious king, were grown ſtrangers to induſtry, and were rather inclined to live upon rapine and ſpoil. *Barl.* 524.

5. But whatever the natural and obvious ſenſe of it may be, when compared with the hiſtory and circumſtances of thoſe times, it is certain that it hath been carried much farther by conſtruction, and the purport of it hath been extended by degrees, until at length there is ſcarcely any other ſtatute, which hath received ſuch a largeneſs of interpretation.

And that I may proceed with clearneſs in a matter ſo eſſential to the office of a juſtice of the peace, I will ſet down the ſeveral expoſitions which have been given of this ſtatute from time to time, by learned men; and then raiſe ſuch obſervations thereupon, as the ſubject will naturally ſuggeſt.

6. The firſt unfolding of the ſenſe of this ſtatute which has occurred, was in the caſe of Sir *Richard Croftes* and Sir *Richard Corbet*, in the ſecond year of the reign of king *Hen.* 7. wherein it was reſolved by all the judges for that purpoſe aſſembled, that he who is bound to the good behaviour, ought not to do any thing which ſhall be cauſe of

breach of peace, or to put the people in fear, dread, or trouble; and ſo ſhall be intended of all things which concern the peace: But not in miſdoing of other things, which touch not the peace. Yet a diverſity was obſerved, between a breach of the peace, and a breach of the good behaviour; for the peace is not broken without any affray or battery, but the good behaviour may be forfeited by the number of people a man has, and by their harneſs, or weapons, and the like, although they break not the peace. 2 *H.* 7. 2.

7. The ſecond inſtance, and upon which much ſtreſs hath been laid, was in the 13th year of the ſame king. In treſpaſs of aſſault, battery, and impriſonment at *D.* the defendant ſaith, that one *Alice B.* had a houſe in the ſame town, and kept there ſuſpicious people, to wit, of common bawdry, and that the plaintiff oftentimes reſorted to the ſame houſe ſuſpiciouſly, with women of bad fame and name, whereby the conſtable of the ſame town required the defendant to aid him to arreſt the plaintiff, to find ſurety of his good behaviour: whereby the defendant came with the ſaid conſtable at the hour of 12 in the night, and him found ſuſpiciouſly in the ſame place; whereupon he took him, and put him in ward: And it was holden by all the juſtices to be a good juſtification; for they ſaid, that it is lawful for every conſtable to take ſuſpected perſons, which wake in the night, and ſleep in the day, or that keep ſuſpicious company. 13 *H.* 7. 10.

8. In the next place, Sir *Anthony Fitzherbert*, who lived in the reign of K. *Hen.* 8. ſaith, that it ſeemeth that one juſtice may, by the commiſſion, iſſue a warrant againſt a perſon to find ſurety of the good behaviour, by his diſcretion, as well as two juſtices may; and the words of the ſtatute of the 34 *Ed.* 3. are to the ſame effect: Otherwiſe, he ſays, damage may happen to ſome of the king's ſubjects, if the party be not attached, before that two juſtices have made the precept; yet (he ſays) the common uſage is, to make ſuch precept of the good behaviour in the name of two juſtices, and it is good to obſerve this direction. *Fitzh.* 7. *Crom.* 122.

9. In the next place, it is proper to take notice of a caſe adjudged in the court of king's bench, in the 30th of Q. *Eliz.* reported by L. *Coke*, 4 *Inſt.* 181. which was thus: At a ſeſſions at *Bridgewater*, in the county of *Somerſet*, one *William King* with ſureties was bound by recognizance to appear at the next general ſeſſions of the peace in the ſame

same county, and in the mean time to be of the good behaviour towards the queen and all her people. And after, at the next sessions, *William King* appeared, and was indicted for slanderous words spoken since his binding, to wit, for saying at one time to *Edward Kyrton*, esquire, *Thou art a pelter, thou art a lyar, and hast told my lord lies.* And he was further indicted, that since the said recognizance, *the close of one* John Wich *with force and arms he broke and entred, and the cattle of the said* John *depasturing in the said close unlawfully vexed and chased.* And afterwards at another time he said to the said *Kyrton*, *thou art a drunken knave.* Which indictment was removed into the king's bench. And hereupon it was debated divers times both at the bar and the bench, whether admitting all that is contained in the indictment to be true, any thing therein was in judgment of law a breach of the said recognizance. And it was resolved, that neither any of the words, nor the trespass, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace; for though the said words, *thou art a liar*, *thou art a drunken knave*, are provocations, yet they tend not immediately to the breach of the peace; as if *William King* had challenged *Kyrton* to fight with him, or had threatened to beat or wound him, or the like; these tend immediately to the breach of the peace, and are therefore breaches of the recognizance of the good behaviour. And this diversity (lord *Coke* says) was justly collected upon the coherence and context of the statute of the 34 *Ed.* 3. whereby justices are assigned for keeping of the peace, and to restrain the offenders, rioters, and all other barators, and to chastise them according to their trespass and offence; and to inquire of pillors and robbers in the parts beyond the seas, and be now come again, and go wandring and will not labour: And thus much for the punishment of offences against the peace after they be done. Then followeth an express authority given to the justices, for prevention of such offences before they be done, namely, *and to take of all them that be not of good fame* (that is, that be defamed and justly suspected that they intend to break the peace) *where they shall be found, sufficient surety and mainprize of their good behaviour towards the king and his people* (which must concern the king's peace, as is also provided by the words subsequent) *to the intent that the people be not by such rioters troubled or endamaged, nor the peace blemished, nor merchants nor other passing by the highways disturbed, nor put in*

the peril that may happen of ſuch offenders. And as for the treſpaſs; although every wrongful treſpaſs is by force and arms, and againſt the peace, yet theſe are not taken to be ſuch as ſhall make a breach of the good behaviour.

10. After this, Mr. *Lambard*, who wrote towards the beginning of the reign of K. *James* 1. ſaith thus: Surety of the good abearing is of great affinity with that of the peace: as being provided for preſervation of the peace, as that other is; for in the commiſſion of the peace, they are both conveyed under one tract of ſpeech, againſt ſuch as threaten to hurt mens bodies, or fire their houſes: which things (he ſays) are now commonly prevented by ſurety of the peace only.

And in the 2 *H.* 7. 2. (above recited) the ſurety of the good abearing is ſet forth to reſt in this point chiefly, that a man do nothing that may be cauſe of a breach of the peace; and that it doth not conſiſt in the obſervation of things that concern not the peace; and that it ſhould differ from ſurety of the peace in this, that where the peace is not broken without an affray, or battery, or ſuch like, this ſurety may be broken by the number of a man's company, or by his or their weapons or harneſs.

And herewithal (he ſays) do alſo agree certain precedents in the king's bench.

But all this notwithſtanding, he thinks that a man may reaſonably affirm, that the ſurety of good abearing ſhould not be reſtrained to ſo narrow bounds.

In proof of which, he proceeds to comment on the above-mentioned ſtatute of the 34 *Ed.* 3. enabling the keepers of the peace *to take of all them that be not of good fame, where they ſhall be found, ſufficient ſurety and mainprize of their good abearing, towards the king and his people*: So that if a man be defamed, he may by virtue hereof, be bound to his good behaviour at the diſcretion of the juſtices. Now the doubt reſteth in this; to underſtand concerning what matters this defamation muſt be: and this (he thinks) may be partly gathered out of the ſaid ſtatute; for after it hath firſt given power to the wardens of the peace to arreſt and chaſtiſe offenders (that is to ſay, againſt the peace, rioters, and barators) then it willeth them to *inquire of ſuch as having been robbers beyond the ſea, were come over hither, and would not labour as they were wont*; and laſtly, it authorizeth them, *to take ſurety of the good behaviour of ſuch as be defamed*, namely, for any of thoſe former offences; for ſo it ſtandeth well together that they

ſhould

ſhould both puniſh ſuch as have already ſo offended, and ſhall alſo provide, that others ſhall not likewiſe offend.

But he ſays, the further this bond of the good abearing doth extend, the more regard there ought to be taken in the awarding of it; and therefore (ſays he) although the juſtices have power to grant it, either by their own diſcretion or upon the complaint of others, even as they may that of the peace, yet I wiſh rather, that they do not command it but only upon ſufficient cauſe ſeen to themſelves, or upon the complaint of other very honeſt and credible perſons.

And then being about to ſet forth the form of a warrant, and of a recognizance for the good behaviour, he ſays, —— And here, foraſmuch as one juſtice alone, and out of ſeſſions, may both by the firſt clauſe of the commiſſion, and alſo by the opinion of *Fitzherbert*, grant this ſurety of the good abearing (although the common practice be, that two ſuch juſtices do join in that doing, whereof alſo *Fitzherbert* hath very good liking) I will not ſtick to ſet forth the common forms as well of the precept as of the recognizance for the ſame, wherein if I ſhall uſe the names of two juſtices, you muſt take that to be done according to the common faſhion, and not of any neceſſity in law. For as I would more gladly uſe the aſſiſtance of a fellow juſtice in this behalf, if I may conveniently have it; ſo if that may not be gotten, I would not greatly fear, when good cauſe ſhall require, to undertake the thing myſelf alone.

And beſides this, he ſays, you may ſee admitted by the opinion of the court, 13 *H.* 7. that if a man in the night ſeaſon haunt a houſe that is ſuſpected for bawdry, or uſe ſuſpicious company, then may the conſtable arreſt him to find ſurety for his good abearing; for bawdry is not merely a ſpiritual offence, but mixed, and ſounding ſomewhat againſt the peace of the land.

And therefore (ſays he) it ſhall not be amiſs at this day, in my ſlender opinion, to grant ſurety of the good abearing, againſt him that is ſuſpected to have begotten a baſtard child, to the end that he may be forthcoming when it ſhall be born; for otherwiſe there will be no putative father found, when the juſtices ſhall after the birth come to take order for his puniſhment, *Lamb.* 115—119.

11. In the next place, Mr. *Pulton*, who lived about the ſame time with Mr. *Lambard*, writeth thus; The ſurety of the good abearing is ordained for the preſervation of the

peace, and it doth differ in nothing from that of the peace, but that there is more difficulty in the performance of it, and the party bound may ſooner ſlide into the peril and danger of it. The ſurety of good abearing is moſt commonly granted in open ſeſſions, or by two or three juſtices; or, upon a *ſupplicavit*, and great cauſe ſhewed and proved, it is granted in the chancery or king's bench. And though one juſtice alone may grant it if he will, yet it is ſeldom done ſo, unleſs it be to prevent ſome great, ſudden, and imminent enormity or danger. The ſurety of the peace is moſt times taken at the requeſt of one for the preſervation of the peace chiefly againſt one. But the ſurety of the good abearing is oftentimes granted at the ſuit of divers, and thoſe muſt be men of credit, and to provide for the ſafety of many; for the effect and purport thereof is, that the party bound ſhall demean himſelf well in his port, behaviour, and company, and do nothing that may be the cauſe of breach of the peace, or in putting the people in fear or trouble: And it is chiefly granted againſt common barators, common rioters, common quarrellers, common peace breakers, and perſons greatly defamed for reſorting to houſes ſuſpected to maintain incontinency or adultery, and againſt thoſe that be generally feared to be robbers or ſpoilers of the king's people, or which do endamage, diſturb, trouble, or put in peril paſſengers by the way. *Pult.* 18.

12. Afterwards Mr. *Dalton*, who wrote towards the latter end of king *James* the firſt his reign, ſays, The ſurety of the good behaviour is of great affinity with that of the peace, and is provided chiefly for the preſervation of the peace; and that it is moſt commonly granted either in the open ſeſſions, or by two or three juſtices out of ſeſſions. Yet by the words of the commiſſion, as alſo by the common opinion of the learned, one juſtice alone, out of ſeſſions, may grant this ſurety of the good behaviour. But this is not uſual, unleſs it be to prevent ſome great and ſudden danger, eſpecially againſt a man that is of any good eſtate, carriage, or report. And it ſhall be good diſcretion in the juſtices, that they do not grant it, but either upon ſufficient cauſe ſeen to themſelves, or upon the ſuit or complaint of others, and the fame very honeſt and credible perſons. *Dalt. c.* 123.

13. In the next place, Mr. *Hawkins*, who wrote in the reign of king *George* the firſt, ſaith thus: There ſeem to have been ſome opinions, that the ſtatute, ſpeaking of thoſe

thoſe that be *not of good fame*, means only ſuch as are defamed, and juſtly ſuſpected, that they intend to break the peace, and that it doth not any way extend to thoſe who are guilty of other miſbehaviours not relating to the peace. But this ſeems much too narrow a conſtruction; ſince the abovementioned expreſſion of perſons of *evil fame*, in common underſtanding, as properly includes perſons of ſcandalous behaviour in other reſpects, as thoſe who by their quarrelſome behaviour, give juſt ſuſpicion of their readineſs to break the peace; and accordingly it ſeems always to have been the better opinion, that a man may be bound to his good behaviour for many cauſes of ſcandal, which give him a bad fame, as being contrary to good manners only; as for haunting bawdy houſes with women of bad fame; or for keeping bad women in his own houſe; or for ſpeaking words of contempt of an inferior magiſtrate, as a juſtice of the peace, or mayor, though he be not then in the actual execution of his office; or of an inferior officer of juſtice, as a conſtable, and ſuch like, being in the actual execution of his office.

However it ſeems the better opinion, that no one ought to be bound to the good behaviour, for any raſh, quarrelſome, or unmannerly words, unleſs they either directly tend to a breach of the peace, or to ſcandaliſe the government, by abuſing thoſe who are intruſted by it with the adminiſtration of juſtice, or to deter an officer from doing his duty: and therefore it ſeems, that he who barely calls another rogue, or raſcal, or teller of lies, or drunkard, ought not for ſuch cauſe to be bound to the good behaviour.

However, ſays he, I cannot find any certain preciſe rules, for the direction of the magiſtrate in this reſpect; and therefore am inclined to think, that he has a diſcretionary power to take ſuch ſurety of all thoſe whom he ſhall have juſt cauſe to ſuſpect to be dangerous, quarrelſome, or ſcandalous; as of thoſe who ſleep in the day, and go abroad in the night; and of ſuch as keep ſuſpicious company; and of ſuch as are generally ſuſpected to be robbers, and the like; and of eves droppers; and common drunkards; and all other perſons, whoſe miſbehaviour may reaſonably be intended to bring them within the meaning of the ſtatute, as perſons of evil fame, who, being deſcribed by an expreſſion of ſo great latitude, ſeem in a great meaſure to be left to the judgment of the magiſtrate. But if he commit one for want of ſureties, he

muſt

muſt ſhew the cauſe with convenient certainty. 1 *Haw.* 132.

14. And thus the ſenſe of the ſtatute hath been extended, not only to offences immediately relating to the peace, but to divers miſbehaviours not directly tending to a breach of the peace; inſomuch as it is become difficult to define how far it ſhall extend, and where it ſhall ſtop.

Mr. *Dalton*, in order to determine the ſame with ſome kind of certainty, hath (notwithſtanding his opinion as abovementioned) inſerted a number of inſtances, wherein ſureties of the good behaviour may be granted; and they are theſe that follow:

(1) Againſt rioters.

(2) Barators.

(3) Common quarrellers, and common breakers of the peace.

(4) Such as lie in wait to rob, or ſhall be ſuſpected to lie in wait to rob, or ſhall aſſault, or attempt to rob another, or ſhall put paſſengers in fear or peril; or ſhall be generally ſuſpected to be robbers by the highway.

(5) Such as are like to commit murder, homicide, or other grievances, to any of the king's ſubjects in their bodies.

(6) Such as ſhall practiſe to poiſon another: one inſtance of which may be the poiſoning their food: thus Mr. *Dalton* granted the good behaviour againſt one who had bought ratſbane, and mingled it with corn, and then caſt it amongſt his neighbour's fowls, whereby moſt of them died.

(7) Such as in the preſence or hearing of the juſtice, ſhall miſbehave himſelf in ſome outrageous manner of force or fraud.

(8) Such as are greatly defamed for reſorting to houſes ſuſpected to maintain adultery, or incontinency.

(9) Maintainers of houſes commonly ſuſpected to be houſes of common bawdry.

(10) Common whoremongers and common whores, for bawdry is an offence temporal as well as ſpiritual, and is againſt the peace of the land.

(11) Night walkers, that ſhall eves-drop mens houſes, or ſhall caſt mens gates, carts, or the like, into ponds, or commit other outrages or miſdemeanors in the night, or ſhall be ſuſpected to be pilferers, or otherwiſe like to diſturb the peace, or that be perſons of ill behaviour, or

of

of evil fame or report generally, or that ſhall keep company with any ſuch, or with any other ſuſpicious perſon in the night.

(12) Suſpected perſons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live; unleſs upon examination they ſhall give a good account of ſuch their living.

(13) Common gameſters, eſpecially if they have not whereon to live.

(14) Such as raiſe hue and cry without cauſe.

(15) Libellers.

(16) Putative father of a baſtard child.

(17) Such as perſuade or procure the putative father to run away, or the mother to be conveyed away, whereby ſhe leaveth her child to the charge of the town.

(18) Such as abuſe a juſtice's warrant, or ſhall abuſe him or the conſtable in executing their office. Nay, it ſeemeth (he ſays) that he who ſhall uſe words of contempt, or contrary to good manners, againſt a juſtice of the peace, tho' it be not at ſuch a time as he is executing his office, yet he ſhall be bound to his good behaviour.

(19) Such as charge another before a juſtice with felony, riot, or forcible entry, and yet will not proſecute or give evidence.

(20) In general, whatſoever act or thing is of itſelf a miſbehaviour, is cauſe ſufficient to bind ſuch an offender to the good behaviour. *Dalt. c.* 124.

To which others have added other inſtances: As,

(21) Forcible entry. 1 *Haw.* 124.

(22) Mr. *Hawkins* ſays, that he hath heard it agreed in the court of king's bench, that a writing full of obſcene ribaldry, without any kind of reflection upon any one, is not puniſhable at all by any proſecution at common law; yet it ſeems, he ſays, that the author may be bound to his good behaviour, as a ſcandalous perſon of evil fame. 1 *Haw.* 195.

(23) A man did beat a woman in *Weſtminſter-hall*, and he was bound to the good behaviour; and ſo (ſays Mr. *Crompton*) he may be bound to the peace or good behaviour, where he ſtriketh a perſon in the preſence of the juſtices in ſeſſions. *Crom.* 124.

(24) A man was bound to the good behaviour by the court of king's bench, for aſſaulting and threatning a perſon ſo, that he could not attend the court in ſuit there, without great coſt. And ſo it ſeemeth that it may be done, where one cometh to the ſeſſions about a traverſe to be tried

there, or to prefer a bill of indictment, if he be assaulted or threatened. *Crom.* 125.

15. I have omitted to make any remarks in the progress of these authorities, being willing to exhibit them together in one view; I proceed now to take notice of such observations as do occur upon the whole.

First, it appears from hence, that the universal practice of one justice binding to the good behaviour, is but of a modern date; altho' the law for it is the same now, that it was near 400 years ago: and that it was a long time doubted, whether one justice alone could require sureties of the good behaviour. But here a distinction ought to be made, between the power given by the commission of the peace, and the power given by the abovementioned statute: As to the commission, there seemeth to be no foundation for any doubt, but that thereby one justice alone may require such sureties; for the words are express *we have assigned you, jointly and severally, and every one of you*; but then that extends only to two instances, namely, to *the threatning of a person concerning his body, or the firing of his house.* As to the statute, the doubt seems to have arisen upon this; in that having appointed who shall be assigned for justices, it then directeth, that *They shall have power to restrain offenders*; and it is holden, as Mr. *Lambard* hath observed, that if no power be expressly given by any statute to any one justice alone, he cannot otherwise compel the observation thereof, than by the help of his fellow justices. And Mr. *Hawkins* speaking hereof in the case of riots, says, that if one justice alone, proceeding upon this statute, shall arrest *an innocent person* as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing of himself; because no one single justice is by this statute made a judge of the said offence: Yet, nevertheless, he says, by a favourable construction which this statute hath received for the advancement of justice, it hath been resolved, that any one justice, upon this statute, *if he finds the persons riotously assembled*, may, without staying for his companions, arrest the offenders, and bind them to their good behaviour.

Secondly, It seemeth from what hath been rehearsed, that the words, *not of good fame*, were generally understood for a long time, to refer to such offences only as have a relation to the peace, and not to other things which concern not the peace.

Thirdly, That one great in-let to the larger, and at length almost unlimited interpretation of the words, was the case abovementioned 13 *H.* 7. wherein it was adjudged

to

to be lawful to arreſt a man for the good behaviour, for frequenting a ſuſpected bawdy houſe, with women of bad fame. And this is the reaſon which Mr. *Dalton* gives for many of his inſtances above ſpecified, namely, that they are more properly againſt the peace, than this ſame caſe of avowtry.

Fourthly, That when once the gap was opened for the admiſſion of other offences not immediately relating to the peace, they flowed in and multiplied. Thus, in the caſe of baſtardy, having ſome affinity with the other of frequenting bawdy houſes, Mr. *Lambard* thought, that with equal reaſon, the reputed father of a baſtard child might be bound to the good behaviour; and in a few years after, Mr. *Dalton* delivers it abſolutely, that he may be ſo bound.

Fifthly, That therefore the natural and received ſenſe of any ſtatute ought not to be departed from without extreme neceſſity; for that one conceſſion will make way for another, and the latter will plead for the ſame right of admiſſion as the former.

Sixthly, That notwithſtanding the aforeſaid inſtances given by Mr. *Dalton* and others, it may not be ſafe in all caſes to rely upon every one of them without diſtinction; not only becauſe it is almoſt impoſſible for any two caſes to be exactly alike in all their circumſtances, but alſo becauſe in fact divers of them at different times have been adjudged otherwiſe, and others have not prevailed without much difficulty and contradiction in the courts above, and perhaps were at length admitted rather from the conveniency and reaſonableneſs of the thing itſelf, and from an indulgence uſually allowed to thoſe gentlemen who ſerve their country without gain, and oftentimes with much trouble, than from any clear, poſitive, and expreſs power given to them by the commiſſion, or by the ſaid ſtatute.

Seventhly, That notwithſtanding all which hath been ſaid, perhaps the caſe before recited, concerning the frequenting of a ſuſpected bawdy houſe, will not wholly ſupport the weight which ſo many authors have laid upon it. For the queſtion, whether a juſtice of the peace had cognizance of the offence, by virtue of the commiſſion of the peace, or of the ſtatute of the 34 *Ed.* 3. was no part of the diſpute; for it was an arreſt by the conſtable *ex officio*, as a conſervator of the peace at common law, and without any warrant from a magiſtrate: And the queſtion was not, whether the conſtable might require ſureties for the good behaviour, as a thing different from ſureties for the peace, but whether in that caſe he could arreſt at all or not.

And

And if the authority of this case shall be abated, several of the abovementioned instances will abate in proportion.

Eighthly, It is to be observed, that others of the above-said instances, were established upon matters originally determined in the court of king's bench, and Mr. *Crompton* himself doth refer to the authority and practice of that court in several instances. *Crom.* 120. But it doth by no means follow from what the justices of the court of king's bench may do, that justices of the peace may do the like; for their authority is circumscribed and limited by their commission and the statute law.

Ninthly, That it will perhaps abate some other of the foregoing instances, if we attend to this consideration; that there is a great difference between what the justices in sessions may do, after conviction by a jury, for an offence committed, and what a single justice out of the sessions may do, before an offence is committed, and to prevent the same from being committed; or what a single justice may do, upon a summary conviction before him, for an offence, as directed by some special act of parliament. The truth is, binding to the good behaviour was a discretionary judgment at the common law, given by a court of record for an offence at the suit of the king, after a common law conviction by verdict of twelve men. Trial by his peers is the *Englishman*'s birthright by the great charter, and cannot be taken away but by an authority equal to that which established it, that is, by act of parliament; and therefore where an act gives a summary conviction before a justice of the peace, and inflicts a punishment upon such conviction, such statute must be pursued both as to the conviction and punishment. And it seemeth incongruous, that a justice of the peace shall have power to bind a man to the good behaviour, for an offence which he himself hath no power to hear and determine; for that is, in effect, giving judgment, and awarding execution, when it doth not, and cannot legally appear to him, that the person is guilty.

Tenthly, That therefore upon the whole it may be proper to conclude, that the magistrate in this article of the good behaviour, cannot exercise too much caution and good advisement; that in matters which the law hath left indefinite it is better to fall short of, than to exceed his commission and authority; that to bind a man to the good behaviour upon the statute for *evil fame* in general, may not always be with safety; not only because upon an action brought it may be hard to prove such evil fame, but also because in fact it is not always true, for many a good man hath been evil

evil ſpoken of: That altho' in ſome caſes, a juſtice of the peace may have a *diſcretionary* power (as Mr. *Hawkins* expreſſeth it) yet he muſt remember withal, that it is a *legal* diſcretion, as Mr. *Barlow* terms it, in which in favour of liberty great tenderneſs is to be uſed; or, as lord *Coke* hath defined it, diſcretion is a knowledge or underſtanding to diſcern between truth and falſhood, between right and wrong, between ſhadows and ſubſtance, between equity and colourable gloſſes and pretences, and not to do according to our wills and private affections; and ſuch diſcretion ought to be limited and bounded with the rules of reaſon, law, and juſtice. 5 *Co.* 100. 10 *Co.* 140.

II. For what it ſhall be forfeited.

1. This hath been handled in part as it fell in with the former ſection: And agreeably to the doctrine there laid down, Mr. *Dalton* ſays, that he who is bound to the good behaviour ought to demean himſelf well in his carriage and in his company, not doing any thing which ſhall be a cauſe of breach of the peace, or to put the people in fear, dread, or trouble; and ſo ſhall be intended of all things which concern the peace, but not in miſdoing of other things which touch not the peace. *Dalt. c.* 122.

2. And Mr. *Hawkins* ſaith, It hath been laid down as a general rule, that whatever will be a good cauſe to bind a man to his good behaviour, will forfeit a recognizance for it; but this hath ſince been denied, and indeed ſeems by no means to be maintainable, becauſe the ſtatute in ordering perſons of evil fame to be bound in this manner, ſeems in many places chiefly to regard the prevention of that miſchief which they may juſtly be ſuſpected to be likely to do; and in that reſpect requires them to ſecure the publick from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in ſuch caſes to make perſons forfeit their recognizance, who yet may juſtly be compellable to give one, as thoſe who keep ſuſpicious company, or thoſe who ſpend much money idly, without having any viſible means of getting it honeſtly, or thoſe who lie under a general ſuſpicion of being rogues, and the like. 1 *Haw.* 132, 133.

3. However it ſeems that ſuch a recognizance ſhall not only be forfeited for ſuch actual breaches of the peace, for which a recognizance for the peace may be forfeited; but alſo for ſome others, for which ſuch a recognizance cannot

be

be forfeited; as for going armed with great numbers, to the terror of the people, or ſpeaking words tending to ſedition: and alſo for all ſuch actual miſbehaviours which are intended to be prevented by ſuch a recognizance, but not for barely giving cauſe of ſuſpicion of what perhaps may never actually happen. 1 *Haw.* 133.

Warrant for the peace, or good behaviour, in the king's majeſty's name.

Weſtmorland. GEORGE *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth. To our ſheriff of the county of* Weſtmorland, *to the conſtable of the hundred of* ——— *in the ſaid county, to the petty conſtables of the town of* ——— *in the ſaid county, and to all and ſingular our bailiffs and other miniſters in the ſaid county, as well within liberties as without, greeting:*

Foraſmuch as A. I. *of* ——— *in the ſaid county, yeoman, hath perſonally come before Sir* William Dalſton, *knight, one of our juſtices aſſigned to keep the peace within the ſaid county, and hath taken a corporal oath, that he the ſaid* A. I. *is afraid that* A. O. *of* ——— *in the ſaid county, yeoman, will beat* [*wound, maim, or kill*] *him the ſaid* A. I. *and hath therewithal prayed ſurety of the peace againſt him the ſaid* A. O. [Or, if for the good behaviour ——— *hath taken a corporal oath, that* A. O. *of* ——— *in the ſaid county, yeoman, hath threatned to beat him the ſaid* A. I. or *to burn the houſe of him the ſaid* A. I. *and hath therewithal prayed ſurety of the good behaviour againſt him the ſaid* A. O.] *Therefore we command and charge you, jointly and ſeverally, that immediately upon the receipt hereof you bring the ſaid* A. O. *before the ſaid Sir* William Dalſton, *to find ſufficient ſurety and mainprize, as well for his perſonal appearance at the next general quarter ſeſſions of our peace, to be holden at* Appleby, *or elſewhere, in and for the ſaid county, as alſo for our peace in the mean time to be kept towards us and all our liege people, and chiefly towards the ſaid* A. I. *that is to ſay, that he the ſaid* A. O. *ſhall not do, nor by any means procure or cauſe to be done, any of the ſaid evils, to any of our ſaid people, and eſpecially to the ſaid* A. I. [Or, if for the good behaviour ——— *as alſo for his good behaviour in the mean time, towards us and all our liege people, eſpecially towards him the ſaid* A. I.] *Witneſs the ſaid Sir* William Dalſton *at* Acorn-

bank *in the said county, the* ——— *day of* ——— *in the* ——— *year of our reign.*

Warrant for the peace, or good behaviour, in the name of the justice himself.

Westmorland. THomas Holme, *esquire, one of the justices of our lord the king assigned to keep the peace within the said county, To the sheriff of the said county, to the high constable of* ——— *in the said county, to the petty constables of* ——— *in the said county, and to all other the ministers and officers of our said lord the king, within the said county, and to every of them, greeting.*

Forasmuch as A. I. *of* ——— *in the said county, yeoman, hath personally come before me, and hath taken a corporal oath, that he the said* A. I. *is afraid that* A. O. *of* ——— *in the said county, yeoman, will beat him (wound, maim, kill, or do to him some bodily hurt) and hath therefore prayed surety of the peace against him the said* A. O. [Or, if for the good behaviour; *That* A. O. *of* ——— *in the said county, yeoman, hath threatned to do some bodily hurt to him the said* A. I. or, *to burn the house of him the said* A. I. *and hath therefore prayed surety for the good behaviour against him the said* A. O.] *These are therefore on the behalf, and in the name of our said lord the king, to command you jointly and severally, that immediately upon the receipt hereof you bring the said* A. O. *before me, to find surety as well for his personal appearance at the next general quarter sessions of the peace, to be holden at* Kirkby *in* Kendale *in and for the said county, as also for his keeping the peace* [Or, *for his being of the good behaviour*] *in the mean time towards the king and all his liege people, and chiefly towards the said* A. I. *Given under my seal at* Kirkby *in* Kendale *in the said county, the* ——— *day of* ——— *in the* —— *year of the reign of our said lord* George *the third, of* Great Britain, France, *and* Ireland, *king.*

Or the warrant may be directed to any of these officers abovenamed, particularly; or to any other indifferent person or persons, as followeth:

Another warrant for the peace, or good behaviour.

Weſtmorland. { To the conſtables of the town of —— in the ſaid county, and to either of them.

FORASMUCH *as* A. I. *the wife of* B. I. *of your ſaid town, labourer, hath required ſureties of the peace* [or, *of the good behaviour*] *before me* Thomas Strickland, *eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, againſt* A. O. *of your ſaid town, butcher, and withal hath taken her corporal oath before me, that ſhe requireth the ſame not for any private malice, hatred, or evil will, but ſimply that ſhe is afraid, that he the ſaid* A. O. *will do to her ſome bodily miſchief* [or as the caſe ſhall be: And if it be for the good behaviour, then add,——*and that he the ſaid* A. O. *hath threatned to do ſome bodily miſchief to her the ſaid* A. I.] *Theſe are therefore in the name of our ſaid lord the king to charge and command you, that immediately upon ſight hereof, you or one of you do bring the ſaid* A. O. *before me to find ſufficient ſureties, as well for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, as alſo that he the ſaid* A. O. *ſhall in the mean time keep the peace,* [or, *be of the good behaviour*] *as well towards our ſaid lord the king, as towards all his liege people, and eſpecially towards the ſaid* A. I. *Dated at* Kirkby *in* Kendale *in the ſaid county, the —— day of —— in the —— year of the reign of our ſaid lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth.*

Another warrant for the peace, or good behaviour.

Weſtmorland. { To the conſtable of —— in the ſaid county.

FORASMUCH *as* A. I. *of —— aforeſaid in the county aforeſaid, yeoman, hath perſonally come before me* John Robinſon, *eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, and hath taken his corporal oath, that* A. O. *of —— aforeſaid, in the county aforeſaid, yeoman, hath aſſaulted, beaten, and wounded him*

him the said A. I. *and further hath threatned him concerning his body, insomuch, that he the said* A. I. *is afraid that the said* A. O. *will beat, wound, maim, or kill him the said* A. I. *or do to him some other bodily harm; and thereupon he the said* A. I. *hath prayed security of the peace,* [or, *of the good behaviour*] *to be had or granted to him against the said* A. O. *These are therefore to require you in the name of our said lord the king, immediately upon the sight hereof, to bring the said* A. O. *before me, to find sufficient sureties for his personal appearance at the next general quarter sessions of the peace to be holden in and for the said county, then and there to answer the premisses, and in the mean time that he the said* A. O. *keep the peace,* [or, *shall be of the good behaviour,*] *towards our said lord the king, and all his liege people, and especially towards the said* A. I. *Given under my hand and seal at* Flodder *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord* George *the third of* Great Britain, France, *and* Ireland, *king.*

Note; The warrants above set forth, so far as they concern the good behaviour, are framed upon the clause in the commission, impowering one justice to bind to the good behaviour certain offenders therein mentioned. The following warrant for the good behaviour simply, as contradistinguished from the peace, is formed on the statute of the 34 *Ed.* 3. so often abovementioned:

Warrant for the good behaviour; on the 34 *Ed.* 3. *c.* 1. from *Lombard* and *Dalton.*

Westmorland. WIlliams Winder, *esquire, and* John Thompson, *esquire, justices of our lord the king, assigned to keep the peace within the said county, To the sheriff of the said county, to the constable of the hundred of* ——— *in the said county, to the petty constables of the town of* ——— *in the said county, and to all and singular the bailiffs, constables, and other officers of our said lord the king, as well within liberties as without, in the same county, greeting.*

Forasmuch as we are given to understand, by the information, testimony, and complaint of many credible persons, that A. O. *of* ——— *in the county aforesaid, gentleman, and* B. O. *of the same, yeoman, are not of good name and fame, nor of honest conversation, but evil doers, rioters, barators, and disturbers of*

the peace of our ſaid lord the king, ſo that murder, homicide, ſtrifes, diſcords, and other grievances and damages amongſt the lieges of our ſaid lord the king concerning their bodies are likely to ariſe thereby; Therefore on the behalf of our ſaid lord the king, we command you, and every of you, that you omit not by reaſon of any liberty within the county aforeſaid, but that you attach, or one of you do attach the aforeſaid A. O. *and* B. O. *ſo that you have them before us or others our fellows, juſtices of our ſaid lord the king, aſſigned to keep the peace within the county aforeſaid, as ſoon as they can be taken* [or, *before the juſtices of our ſaid lord the king, aſſigned to keep the peace within the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county*] *to find then before us (or the ſaid juſtices) ſufficient ſurety and mainpriſe for their good behaviour towards our ſaid lord the king, and all his people, according to the form of the ſtatute in ſuch caſe made and provided. And this you ſhall in no wiſe omit, on the peril that ſhall enſue thereon. And have you before us, or before the ſaid juſtices* [*at the ſeſſions aforeſaid*] *this precept. Given under our ſeals at* Brough *in the county aforeſaid, the ——— day of ——— in the ——— year of the reign of our ſaid lord ———.*

Recognizance for the peace or good behaviour.

Weſtmorland. BE *it remembred, that on the ——— day of ——— in the ——— year of the reign of our lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of ——— in the county aforeſaid, yeoman,* A. S. *of the ſame place, yeoman, and* B. S. *of the ſame place, yeoman, came before me* Henry Chaytor, *clerk, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, and acknowledged themſelves to owe to our ſaid lord the king, to wit, the ſaid* A. O. *the ſum of* 20 l. *and the ſaid* A. S. *the ſum of* 10 l. *and the ſaid* B. S. *the ſum of* 10 l. *of good and lawful money of* Great Britain, *to be reſpectively made and levied of their ſeveral goods and chattels, lands and tenements, to the uſe of our ſaid lord the king, his heirs and ſucceſſors, if he the ſaid* A. O. *ſhall fail in performing the condition indorſed,* [or, *underwritten*].

Acknowledged before me

Henry Chaytor.

The condition of this recognizance is such, that if the within bounden [or, *above bounden*] A. O. *shall personally appear at the next general quarter sessions of the peace to be holden in and for the county aforesaid, to do and receive what shall then and there be enjoined him by the court, and in the mean time shall keep the peace,* [or, *be of the good behaviour*, or, *shall keep the peace and be of the good behaviour*] *towards the king and all his liege people, and especially towards* A. I. *of* ——— *in the said county, yeoman; Then the said recognizance shall be void, or else remain in its force.*

Mittimus for want of sureties.

Westmorland. { To the constable of ——— and to the keeper of ——— in the said county.

WHEREAS A. O. *of* ——— *in the said county, yeoman, is now brought before me Sir* William Dalston, *knight, one of the justices of our lord the king, assigned to keep the peace in and for the said county, requiring him to find sufficient sureties to be bound with him in a recognizance for his personal appearance at the next general quarter sessions of the peace to be holden in and for the said county, and in the mean time to keep the peace* [or, *be of the good behaviour*] *towards our said lord the king, and all his liege people, and especially towards* A. I. *of* ——— *in the said county, yeoman; and whereas he the said* A. O. *hath refused and doth now refuse before me to find such sureties: These are therefore in the name of our said lord the king, to command you the said constable, forthwith to convey the said* A. O. *to the common gaol of our said lord the king* [or, *to the house of correction*] *at* ——— *in the said county, and to deliver him to the keeper thereof there, together with this precept: And I do, in the name of our said lord the king, hereby command you the said keeper, to receive the said* A. O. *into your custody in the said gaol* [or, *house of correction*] *and him there safely to keep, until he shall find such sureties as aforesaid. Given under my hand and seal, at* Acorn Bank *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord* George *the third of* Great-Britain, France, *and* Ireland, *king.*

The form of a *superſedeas*.

Weſtmorland. ROGER Wilſon, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the county aforeſaid, To the ſheriff, bailiff, conſtables, and other the faithful miniſters and ſubjects of our ſaid lord the king within the ſaid county, and to every of them, greeting.*

Foraſmuch as A. O. *of* ——— *in the ſaid county, yeoman, hath perſonally come before me at* Caſterton *in the ſaid county, and hath found ſufficient ſurety, that is to ſay,* A. S. *of* ——— *yeoman, and* B. S. *of* ——— *yeoman, either of the which hath undertaken for the ſaid* A. O. *under the pain of* 20 l. *and he the ſaid* A. O. *hath undertaken for himſelf under the pain of* 40 l. *that he the ſaid* A. O. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, then and there to do and receive what ſhall be injoined him by the ſaid court, and in the mean time ſhall well and truly keep the peace* [or, *be of the good behaviour*] *towards our ſaid lord the king, and all his liege people, and eſpecially towards* A. I. *of* ——— *yeoman: Therefore on behalf of our ſaid lord the king I do command you, and every of you, that you utterly forbear and ſurceaſe to arreſt, take, impriſon, or otherwiſe by any means for the ſaid cauſe to moleſt the ſaid* A. O. *and if you have, for the ſaid occaſion, and for none other, taken and impriſoned him the ſaid* A. O. *that then him you deliver, or cauſe to be delivered and ſet at liberty, without further delay. Given at* Caſterton *aforeſaid, in the county aforeſaid, under my ſeal, this* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

This *ſuperſedeas* may be alſo in the name of the king, under the teſte of the juſtice, thus;

GEORGE *the third, by the grace of god,* &c. *To the ſheriff,* &c. *greeting: Foraſmuch as* A. O. *hath come before* Henry Lowther, *clerk, one of our juſtices aſſigned to keep the peace within our ſaid county, and hath found,* &c. *We therefore command you, and every of you, that ye forbear,* &c. *Witneſs the ſaid* Henry Lowther, *at* Lowther *in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of our reign.*

Releaſe

Releaſe of the ſurety for the peace, or good behaviour.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of* ——— *the aforeſaid* A. I. *hath come before me the ſaid* Fletcher Fleming, *eſquire, and freely remiſed and releaſed, as much as in him lieth, the aforeſaid ſecurity of the peace* [or, *of the good behaviour*] *by him prayed before me againſt the abovenamed* A. O. *In witneſs whereof, I the ſaid* Fletcher Fleming *have hereunto ſet my ſeal. Given*, &c.

This is to be written under the recognizance; and if the juſtice only ſign, without ſealing it, it is well enough, eſpecially where the recognizance is without ſeal.

Or, the releaſe may be by itſelf, thus:

Weſtmorland. BE *it remembred, that* A. I. *of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *came before me* William Tatham, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, at* Aſkham *in the ſaid county, and there remiſed and freely releaſed to* A. O. *of* ——— *in the ſaid county, yeoman, the ſurety of the peace* [or, *good behaviour*] *by him the ſaid* A. I. *before me prayed againſt the ſaid* A. O. *Given*, &c.

Or, if it is before another juſtice, then ſay, ——— *the ſurety of the peace* [or, *good behaviour*] *which he has againſt* A. O. *of* ——— *in the ſaid county, yeoman. Given*, &c.

But note, that none of theſe releaſes will diſcharge the recognizance, or the appearance of the party bound thereby; but that he muſt appear according to the condition of the recognizance, for the ſafeguard of his recognizance.

Liberate to diſcharge one committed for want of ſureties.

Weſtmorland. STanwix Nevinſon, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the county aforeſaid, To the keeper of his majeſty's gaol at* ——— *in the ſaid county, greeting.*

Forasmuch as A. O. *in the prison of our said lord the king, in your custody now being, at the suit of* A. I. *of* ——— *in the said county, yeoman, for the want of his finding sufficient sureties for his personal appearance at the next general quarter sessions of the peace, to be holden in and for the said county, and for his keeping the peace* [or, *being of the good behaviour*] *in the mean time, towards our said lord the king, and all his liege people, and especially towards the said* A. I. *hath found before me sufficient sureties, to wit,* A. S. *of* ——— *yeoman, and* B. S. *of* ——— *yeoman, either of which hath undertaken for the said* A. O. *under the pain of* 20 l. *and he the said* A. O. *hath undertaken for himself under the pain of* 40 l. *that he the said* A. O. *shall and will personally appear at the next general quarter sessions of the peace to be holden in and for the said county, and shall well and truly keep the peace* [or, *be of the good behaviour*] *in the mean time, towards our said lord the king, and all his liege people, and especially towards the said* A. I. *Therefore on the behalf of our said lord the king I do command you, that if the said* A. O. *do remain in the said gaol, for the said cause, and for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will fall thereon. Given under my seal at* Newby Hall *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord* George *the third of* Great Britain, France, *and* Ireland, *king.*

Surgeons. See **Physicians.**

Suspicion. See **Arrest, Warrant.**

Swans. See **Game.**

Swearing.

Punishment in the spiritual court.

1. BY the canons of the church, If any offend their brethren by swearing, the churchwardens shall present them; and such notorious offenders shall not be admitted to the holy communion, till they be reformed. *Can.* 109.

And by the statute of the 19 *G.* 2. *c.* 21. It is enacted as follows:

2. If

2. If any perſon ſhall profanely curſe or ſwear, and be thereof convicted on confeſſion, or oath of one witneſs, before one juſtice (or mayor), he ſhall forfeit as follows: That is to ſay, Pecuniary penalty.

Every day labourer, common ſoldier, or common ſeaman, 1 *s.*

Every other perſon, under the degree of a gentleman, 2 *s.*

And every perſon of or above the degree of a gentleman, 5 *s.*

And for a ſecond offence after conviction, double; and for every other offence after a ſecond conviction, treble. *ſ.* 1.

Which ſaid penalties ſhall go to the poor of the pariſh where the offence was committed. *ſ.* 10.

3. If ſuch perſon ſhall curſe or ſwear in the preſence and hearing of a juſtice (or mayor); he ſhall convict him without other proof. *ſ.* 2. Swearing in preſence of a juſtice.

4. If in the preſence and hearing of a conſtable, if he is *unknown* to ſuch conſtable, the ſaid conſtable ſhall ſeize and carry him forthwith before the *next* juſtice (or mayor of a town corporate), who ſhall convict him upon the oath of ſuch conſtable. In preſence of a conſtable.

If he is *known* to ſuch conſtable, he ſhall ſpeedily make information before ſome juſtice (or mayor) in order that he may be convicted. *ſ.* 3.

5. So that the conſtable, if it is in his hearing, is required to proſecute; but any other perſon alſo may proſecute if he pleaſes. In preſence of any other.

6. And ſuch juſtice (or mayor) ſhall immediately on ſuch information on the oath of any conſtable, or of any other perſon, cauſe the offender to appear before him; and on proof of ſuch information convict him; and if he ſhall not immediately pay down the penalty, or give ſecurity to the ſatisfaction of ſuch juſtice (or mayor); he may commit him to the houſe of correction, to be kept to hard labour for ten days. *ſ.* 4. Commitment on not paying the penalty.

7. Alſo the charges of the information and conviction, ſhall be paid by the offender, if able, over and above the penalties; which charges ſhall be aſcertained by ſuch juſtice (or mayor). *ſ.* 11. On not paying the charges.

But for the information, ſummons, and conviction, no more ſhall be paid to the juſtice's clerk, than 1 *s.* *ſ.* 15.

And if he ſhall not immediately pay ſuch charges, or give ſecurity to the ſatisfaction of ſuch juſtice (or mayor); he may

may commit him to the houſe of correction, to be kept to hard labour for ſix days, over and above ſuch time for which he may be committed for non-payment of the penalties; and in ſuch caſe, no charges of information and conviction ſhall be paid by any perſon. *ſ.* 11.

Soldier or ſeaman.

8. But if ſuch ſoldier or ſeaman ſhall not ſo pay or ſecure the penalty, and alſo the coſts of the information, ſummons, and conviction; he ſhall, inſtead of being committed to the houſe of correction, be ordered to be publickly ſet in the ſtocks for one hour for every ſingle offence, and for any number of offences whereof he ſhall be convicted at one and the ſame time two hours. *ſ.* 5.

Form of the conviction.

9. The conviction ſhall be in the words and form following;

Be it remembred, that on the ——— day of ——— in the ——— year of his majeſty's reign, A. B. *was convicted before me (one of his majeſty's juſtices of the peace for the county, riding, diviſion, or liberty aforeſaid; or before me ——— mayor of the city or town of ——— within the county of ———) of ſwearing one or more profane oath or oaths, or of curſing one or more profane curſe or curſes. Given under my hand and ſeal the day and year aforeſaid.* ſ. 8.

Certiorari.

10. Which conviction ſhall not be removed by certiorari. *ſ.* 9.

Conviction to be filed.

11. And the juſtice (or mayor) ſhall cauſe the conviction to be fairly wrote upon parchment, and returned to the next general or quarter ſeſſions, to be filed by the clerk of the peace, and kept amongſt the records. *ſ.* 9.

Penalty on a juſtice omitting his duty.

12. If any juſtice (or mayor) ſhall omit his duty, in the execution of this act, he ſhall forfeit 5 *l.* half to the poor where he ſhall reſide, and half to him that ſhall ſue in any court of record. *ſ.* 6.

Penalty on the conſtable.

13. Conſtable omitting his duty, ſhall on conviction, on oath of one witneſs, before one juſtice (or mayor), forfeit 40 *s.* to be levied by diſtreſs, half to the informer, and half to the poor; and if he have not ſufficient goods whereon to levy, ſuch juſtice (or mayor) may commit him to the houſe of correction, to be kept to hard labour for one month. *ſ.* 7.

Act to be read in the church.

14. And this act ſhall be publickly read four times in the year, in all churches and chapels, by the miniſter immediately after morning and evening prayer, on the *Sundays*

next after *Mar.* 25. *June* 24. *Sept.* 29. and *Dec.* 25. on pain of 5 *l.* for every offence, to be levied by diſtreſs, by warrant of a juſtice (or mayor). *ſ.* 14.

15. But no perſon ſhall be proſecuted for any offence againſt this act, unleſs it be within eight days after the offence committed. *ſ.* 13. Limitation of actions.

16. By the 22 *G.* 2. *c.* 33. Perſons belonging to his majeſty's ſhips of war, guilty of profane oaths or curſes, ſhall incur ſuch puniſhment as a court martial ſhall impoſe. Navy.

Information.

Weſtmorland. THE *information of* A. I. *of* ——— *in the county aforeſaid yeoman, made on oath this* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county: Who ſaith, That on* ——— *the* ——— *day of* ——— *now laſt paſt, at* ——— *in the pariſh of* ——— *in the ſaid county aforeſaid, he heard* A. O. *of* ——— *in the ſaid county, yeoman, ſwear one profane oath* [or, *curſe one profane curſe*] *in theſe words,* to wit, &c.

Summons.

Weſtmorland. } To the conſtable of ———.

WHEREAS *information hath this day been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, upon the oath of* A. I. *of* ——— *yeoman, that on* ——— *the* ——— *day of this preſent month of* ——— *he heard* A. O. *of* ——— *in the ſaid county, yeoman, at* ——— *in the pariſh of* ——— *in the ſaid county, ſwear one profane oath* [or, *curſe one profane curſe*] *Theſe are therefore to command you to cauſe the ſaid* A. O. *forthwith to appear before me to anſwer the premiſſes, and to be further dealt with according to law. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of* ———.

Commitment.

Commitment.

Weſtmorland. { To the conſtable of—in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. O. *of* —— *in the ſaid county, day labourer, is and ſtands convicted this day before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, of ſwearing one profane oath, on the* ——— *day of this preſent month of* —— *at* —— *in the pariſh of* —— *in the ſaid county, whereby he hath forfeited the ſum of* 1 s. *to the poor of the ſaid pariſh of* —— *and whereas the ſaid* A. O. *hath refuſed and doth refuſe to pay down the ſaid ſum of* 1 s. *for the uſe of the poor aforeſaid, and alſo hath refuſed and doth refuſe to give ſatisfactory ſecurity to pay the ſame; Theſe are therefore to require you the ſaid conſtable to convey the ſaid* A. O. *to the houſe of correction at* ——— *aforeſaid, and to deliver him to the keeper thereof together with this warrant: And I do hereby command you the ſaid keeper to receive him the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and there to detain and keep him to hard labour for the ſpace of ten days. And for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

If he alſo refuſeth to pay the charges, theſe words may be added —— *ſatisfactory ſecurity to pay the ſame: And whereas the ſaid* A. O. *hath likewiſe refuſed, and doth refuſe to pay the ſum of* 1 s. *which I have ſettled and aſcertained as and for the charges of the proceedings againſt him touching the premiſſes, and hath refuſed and doth refuſe to give ſatisfactory ſecurity to pay the ſame: Theſe are therefore to require you* ——— *for the ſpace of ſixteen days* ———.

Sweets. See Exciſe.

Tanners. See **Leather.**
Taylors. See **Buttons.**
Tea. See **Excise.**
Tenant. See **Distress.**

Thames.

CONCERNING regulations of the navigation on the river of *Thames*, the same being not general, it shall be sufficient only to mention the several acts touching the same; *viz.*

2 & 3 *P. & M. c.* 16.
1 *J. c.* 16.
6 & 7 *W. c.* 16.
11 & 12 *W. c.* 21.
4 *An. c.* 13.
9 *An. c.* 26.
2 *G.* 2. *c.* 26.
4 *G.* 2. *c.* 24.
5 *G.* 2. *c.* 20.
6 *G.* 2. *c.* 29.
10 *G.* 2. *c.* 31.
24 *G.* 2. *c.* 8.

Theft. See **Larceny.**
Theftbote. See **Felony.**
Threatning. See **Surety.**

Tiles.

EVERY person using the occupation of making tile, shall make it good, seasonable, and sufficient, and well whited and anealed. And the earth whereof it shall be made, shall be digged and cast up before the first of *November*, and stirred and urned before the first of *February*, and not wrought before the first of *March*; and before it be put to making of tile, shall be truly wrought and tried

from ſtones; and the veins called malin or marle, and chalk, ſhall be ſevered from the earth whereof the tile is made: And plain tile ſhall be 10½ inches long, 6¼ broad, and half an inch and half a quarter thick; roof tile or creſs tile, 13 inches long, half an inch and half a quarter thick, with convenient deepneſs; gutter tile and cover tile, 10½ inches long, with convenient thickneſs, breadth, and deepneſs. And if any perſon ſet to ſale any tile made contrary to this ordinance, he ſhall forfeit to the buyer double value, and make fine and ranſom at the king's will. And every perſon that feeleth himſelf grieved, and will ſue, may have an action of debt againſt the offender. And the plaintiff in every ſuch action may recover his coſts. And the juſtices of the peace, and every of them, may hear and determine by their diſcretions, as well by examination as otherwiſe, offences againſt this ordinance, as well at the king's ſuit as the party's who ſhall be grieved. And if it appear to the juſtices, or any of them, that any perſon hath offended herein, then the ſame juſtices ſhall aſſeſs upon the offender no leſs than for every 1000 of plain tile 5 *s.* for every 100 of roof tile 6 *s.* 8 *d.* for every 100 of corner tile or gutter tile 2 *s.* And the ſaid juſtices may call before them perſons having knowledge in making of tile, to ſearch and examine the digging, turning, parting, making, whiting, and anealing. And no perſon ſhall put to ſale any tile before it be ſearched, on pain of forfeiting the ſame. And if the ſearchers find any defaulters, they ſhall preſent them at the next ſeſſions; which preſentment ſhall be as effectual as that of 12 men. And the ſearcher ſhall have of the tile maker for his labour, for every 1000 plain tile ſearched 1 *d.* for every 100 roof tile an half-penny, and for every 100 of corner tile and gutter tile a farthing. Searcher making default, ſhall forfeit 10 *s.* to the king: And the juſtices may hear and determine the defaults of the ſearchers, in like manner as of the tile makers. 17 *Ed.* 4. *c.* 4.

Tin. See Pewter.

Tithes.

I. Of ſmall tithes due from any perſon.
II. Of great and ſmall tithes and other church rates and payments, due from quakers only.
III. Of contempts for tithes in the ſpiritual court.

I. Of ſmall tithes due from any perſon.

THE books in general do confound the acts of the 7 & 8 *W. c.* 6. concerning ſmall tithes only, due from any perſon whatſoever (whether quaker or not being no way material); and the 7 & 8 *W. c.* 34. and 1 *G. ſt.* 2. *c.* 6. concerning quakers tithes only, great and ſmall, and their other church dues. Nevertheleſs, the acts are entirely diſtinct in themſelves, and the method of proceeding in the one caſe and in the other is different in almoſt every inſtance. I have therefore taken care to extricate them out of this confuſion, by inſerting them ſeparately, and by drawing diſtinct forms upon each, according to the different methods of proceeding.

For what tithes.

1. And firſt, as to the ſmall tithe act, 7 & 8 *W. c.* 6. —In this caſe the proſecution muſt be for ſmall tithes only, or compoſitions for the ſame; or for offerings, oblations, or obventions: and not otherwiſe. *ſ.* 1.

And they muſt not amount to above 40*s.* a year, from any one perſon. *id.*

And they muſt have become due within two years next before the complaint. *ſ.* 6.

And they muſt not be in *London*, nor in any place where the tithes are otherwiſe ſettled by act of parliament. *ſ.* 5.

And they muſt not have been begun to be ſued for in the exchequer, or eccleſiaſtical court. *ſ.* 14.

[Note; tithes, with regard to their ſeveral *kinds* or *natures*, are divided into *prædial*, *mixt*, and *perſonal*. *Prædial* tithes are ſuch as ariſe merely and immediately from the ground; as grain of all ſorts, hay, wood, fruits, herbs; for a piece of land or ground being called in Latin *prædium* (whether it be arable, meadow, or paſture) the fruit

or

or produce thereof is called *prædial*, and consequently the tithe payable for such annual produce, is called a *prædial* tithe. *Mixt* tithes are those which arise not immediately from the ground, but from things immediately nourished by the ground, as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof; as colts, calves, lambs, chickens, milk, cheese, eggs. *Personal* tithes are such profits as do arise by the honest labour and industry of man, employing himself in some personal work, artifice, or negociation; being the tenth part of the clear gain, after charges deducted.——Tithes, with regard to *value*, are divided into *great* and *small*. *Great* tithes, are chiefly corn, hay, and wood. *Small* tithes, are the *prædial* tithes of other kinds, together with those which are called mixt, and personal.—*Offerings*, *oblations*, and *obventions*, are the customary payments for communicants at *Easter*, for marriages, christenings, churching of women, burials, and such like.]

Demand of the tithes.

2. Of these demand must first be made. *s.* 1.

Complaint.

3. And if any person shall fail in the payment of the same, by the space of 20 days after such demand; the person to whom the same shall be due, may make complaint in writing to two justices of the peace, neither of whom is patron of the church or chapel, nor interested in the tithes. *s.* 1.

H. 6 *G. K.* and *Furnes.* Order for non-payment of small tithes was quashed, because said only *upon complaint* generally, and the statute requires the complaint to be *in writing*. Str. 264.

Summons.

4. Hereupon the said justices shall summon in writing under their hands and seals, by reasonable warning, every person against whom such complaint shall be made. *s.* 2.

Hearing.

5. And after appearance, or default of appearance (the warning or summons being proved upon oath), the said justices shall proceed to hear and determine the complaint. *s.* 2.

Pleading an exemption.

6. And if on hearing the same, any person shall insist on a prescription, composition, *modus decimandi*, agreement, or title, whereby he ought to be freed from payment, and deliver the same in writing to the justices, subscribed by him, and shall then give the party complaining security to the satisfaction of the justices, to pay all such costs and damages, as upon a trial at law shall

be

be given againſt him; in that caſe, the juſtices ſhall forbear to give judgment. *ſ.* 8.

7. Otherwiſe, they ſhall in writing under their hands and ſeals, adjudge the caſe; and give ſuch compenſation, as they ſhall judge to be juſt and reaſonable; and alſo ſuch coſts and charges, not exceeding 10*s.* as upon the merits of the cauſe ſhall appear juſt. Adjudication.

Alſo they may give coſts, not exceeding 10*s.* to the party proſecuted, if they ſhall find the complaint to be falſe and vexatious. *ſ.* 12.

8. Of which adjudication notice ſhall be given to the party complained of. *ſ.* 3. Demand of the ſum adjudged.

9. And if any perſon ſhall refuſe or neglect by the ſpace of ten days after ſuch notice given, to pay or ſatisfy ſuch ſum adjudged; the conſtables and churchwardens, or one of them, ſhall by warrant under the hands and ſeals of the ſaid juſtices, diſtrain his goods, and after detaining them three days (if the money, together with reaſonable charges for making and detaining the diſtreſs, be not paid in the mean time) ſhall publickly ſell the ſame, and pay to the party complaining the ſum adjudged, retaining to themſelves ſuch reaſonable charges for making and keeping the diſtreſs, as the ſaid juſtices ſhall think fit. *ſ.* 3. Diſtreſs and ſale.

But by the 27 *G.* 2. *c.* 20. The diſtreſs ſhall be detained not leſs than four days, nor more than eight; and the officers may deduct the charges not only of *making* and *keeping* the diſtreſs, but alſo of the *ſale*; but then the juſtices cannot by the ſaid act of the 27 *G.* 2. adjuſt the *quantum* of the charges of *ſale*, as they may by this act the charges of *making* and *keeping* the diſtreſs.

10. And if any perſon againſt whom judgment ſhall be obtained, ſhall remove out of the county before the ſum ſhall be levied; the juſtices who made the judgment, or one of them, ſhall certify the ſame under hand and ſeal, to any juſtice of ſuch other county, who ſhall by his warrant order the ſame to be levied in like manner. *ſ.* 10. Diſtreſs out of the county.

11. Any perſon aggrieved by the judgment of the two juſtices, may appeal to the next ſeſſions; and if they confirm the judgment, they ſhall decree the ſame by order of ſeſſions, and give coſts againſt the appellant, to be levied by diſtreſs, as to them ſhall ſeem juſt and reaſonable. *ſ.* 7. Appeal.

12. And no proceedings herein ſhall be removed by certiorari, or otherwiſe; unleſs the title of ſuch tithes, oblations, or obventions ſhall be in queſtion. *ſ.* 7. Certiorari.

Adjudication to be recorded.

13. Finally, Every perſon who ſhall obtain any judgment, or againſt whom any ſuch judgment ſhall be obtained, ſhall cauſe the ſame to be inrolled at the next ſeſſions; for which the clerk of the peace ſhall have 1 s. *ſ.* 9.

II. Of great and ſmall tithes and other church rates and payments, due from quakers only.

For what tithes and dues.

1. This is upon the acts of the 7 & 8 *W. c.* 34. and 1 *G. ſt.* 2. *c.* 6.—And the proſecution in this caſe may be, for any tithes or church rates, or any cuſtomary or other rights, dues, or payments belonging to any church or chapel, which of right by law and cuſtom ought to be paid for the ſtipend or maintenance of any miniſter or curate officiating in any church or chapel.

Provided that the ſame do not exceed the value of 10 *l.* —But no time is limited, within which the ſame ſhall become due.

Complaint.

2. And where any quaker ſhall refuſe to pay or compound for the ſame, any parſon, vicar, curate, farmer, or proprietor of ſuch tithes, or any churchwarden or chapelwarden, or other perſon who ought to have, receive, or collect, any ſuch tithes, rates, dues, or payments, may make complaint to any two juſtices, other than ſuch as is patron of the church or chapel, or any way intereſted in the tithes.

Note; here is no number of days limited, between the time of refuſal and the complaint; nor is it thereby required that ſuch complaint ſhall be in writing.

Summons.

3. Upon which complaint the ſaid juſtices ſhall ſummon in writing under their hands and ſeals, by reaſonable warning, ſuch quaker.

Hearing.

4. And after appearance, or on default of appearance (the warning or ſummons being proved before them upon oath), they may proceed to examine on oath the truth of the complaint, and to aſcertain and ſtate what is due and payable.

Adjudication.

5. And by order under their hands and ſeals, they may direct and appoint the payment thereof; ſo as the ſum ordered (as is aforeſaid) do not exceed 10 *l.* And alſo ſuch coſts and charges, as they ſhall think reaſonable, not exceeding 10 *s.*

6. And

6. And on refuſal to pay, it ſhall be lawful for any one of the two *next* juſtices, by warrant under his hand and ſeal, to levy the ſame by diſtreſs and ſale, rendring the overplus, the neceſſary charges of diſtraining being thereout firſt deducted and allowed by the ſaid juſtice; unleſs it be in the caſe of appeal, and then no warrant of diſtreſs ſhall be granted, till after the appeal ſhall be determined. Diſtreſs and ſale.

Therefore it ſeemeth beſt not to make out, at leaſt not to execute, the warrant of diſtreſs, until after the next ſeſſions.

Note again, here is no time limited for detaining the diſtreſs, nor charges allowed for the keeping of it; ſo that it may be ſold immediately.

And by the ſtatute of the 27 *G.* 2. *c.* 20. which in all other caſes gives the juſtices power, in their warrant of diſtreſs, to order the goods diſtrained to be detained for a certain time, not leſs than four days, the *tithes* and *church rates* of quakers (although not thoſe other dues and payments) abovementioned are excepted.

Alſo, it is obſervable here, that the ſtatute of the 7 & 8 *W.* limits the proceedings to the two *next* juſtices (not intereſted); and the ſtatute of the 1 *G.* enlarges the ſame to *any* two juſtices (not intereſted) as to the complaint, ſummons, and order, but reſtrains the *diſtreſs* to the limitations in the ſtatute of the 7 & 8 *W.* that is, to one of the two *next* juſtices as aforeſaid; which poſſibly may have been an overſight; for it may happen hereupon, that neither of the two juſtices which made the order, can inforce the execution of it by diſtreſs. To prevent which inconvenience, it may be proper that *one* at leaſt of the juſtices complained to, be one of the two next juſtices (not intereſted.)

7. Any perſon aggrieved by the judgment of the two juſtices, may appeal to the next ſeſſions; where if the judgment ſhall be affirmed, they ſhall decree the ſame by order of ſeſſions, and give coſts againſt the appellant, to be levied by diſtreſs and ſale, as to them ſhall ſeem reaſonable. Appeal.

8. And no proceedings herein ſhall be removed by certiorari, or otherwiſe, unleſs the title of ſuch tithes ſhall be in queſtion. Certiorari.

H. 31 *G.* 2. *K.* againſt *Roger Wakefield* and others. An order of two juſtices was made againſt three perſons being quakers, for the payment of certain cuſtomary payments,

called *chapel ſalary*, to the reverend Mr. *Smith*, curate of the chapel of *Burniſide* in *Weſtmorland*, where the ſaid quakers had eſtates chargeable with the ſaid payments. On appeal to the ſeſſions, the order was confirmed. The quakers moved for a certiorari, and tho' cauſe was ſhewn againſt the iſſuing of it, yet a certiorari was granted; and the return was filed, and exceptions were taken to it, and argued at the bar. Lord Mansfield chief juſtice delivered the opinion of the court: That the certiorari ought not to have iſſued at all; that the return ſhould be taken off the file, and all proceedings thereon fall to the ground, and that the orders of the juſtices and ſeſſions ſhould be remanded. The order of the juſtices (he obſerved) was made on the ſtatute of the 1 *G. ſt.* 2. *c.* 6. which extends the 7 & 8 *W. c.* 34. concerning tithes, to all cuſtomary payments due to clergymen. Thoſe two acts are to be taken together as one law. They were intended for the benefit of the quakers; to prevent their being liable to expenſive ſuits for refuſing to pay tithes upon ſcruples of conſcience, by giving an apparent compulſory method of levying tithes and other cuſtomary payments in a ſummary way. This proceeding cannot be removed by certiorari, unleſs the title to theſe cuſtomary payments comes in queſtion: And on this proviſo the preſent queſtion ariſes. The affidavits read on the original motion for the certiorari ſet forth, that before the juſtices and the ſeſſions the defendants controverted the right of the curate to theſe cuſtomary payments. The affidavits againſt the certiorari ſay, that theſe payments have been made from time immemorial; that no inhabitant ever diſputed it but theſe quakers; that they have enjoyed the meſſuages but a few years, and that the former inhabitants never diſputed the right of the parſon. Taking theſe affidavits together, it is clear that the quakers controvert the right to the cuſtomary only as all quakers controvert the payment of all dues to all clergymen upon ſcruple of conſcience, which is the caſe directly within the act, and the proceeding muſt therefore follow the directions of the act. The quakers themſelves have acknowledged the juriſdiction of the juſtices, by appealing to the ſeſſions; whereas had they intended to diſpute the title to theſe cuſtomary payments, they would at firſt have removed the order of two juſtices by certiorari. The only difficulty remaining ariſes from the return being already filed. But there are ſeveral inſtances of this court's ſuperſeding a certiorari after the return filed: As where an order

order of juſtices is removed, and it appears upon the return, that the parties had a right to appeal to the ſeſſions, and that the time for appealing was not expired when the certiorari iſſued; in ſuch a caſe, this court ſuperſedes the writ of certiorari, *quia improvide emanavit.* The ſame muſt be done in the preſent caſe.

III. Of contempts for tithes in the ſpiritual court.

Contempt of proceſs.

1. By the 27 *H.* 8. *c.* 20. If the eccleſiaſtical judge ſhall, for any contempt, contumacy, diſobedience, or other miſdemeanor, of any defendant in the caſe of tithes, make information and requeſt to the juſtices of the peace of the ſhire where the offender dwelleth, to aſſiſt him to order and reform any ſuch perſon; two of the ſaid juſtices (1 *Q.*) may cauſe the perſon to be attached, and commit him to ward, till he ſhall have found ſufficient ſurety, to be bound to the king by recognizance or otherwiſe, to give due obedience to the proceſs, proceedings, decrees, and ſentences of the eccleſiaſtical court where the ſuit ſhall be. *ſ.* 1.

Contempt after judgment.

2. And by the 32 *H.* 8. *c.* 7. If any perſon, after ſentence definitive given againſt him in the eccleſiaſtical court, ſhall obſtinately and wilfully refuſe to pay his tithes, or duties, or ſums of money adjudged for the ſame; two juſtices (1 *Q.*) may, upon information, certificate, or complaint in writing by the eccleſiaſtical judge, cauſe the party refuſing to be attached, and committed to the next gaol, till he ſhall have found ſufficient ſureties by recognizance or otherwiſe, to perform the ſaid definitive ſentence and judgment. *ſ.* 4.

Complaint for ſmall tithes; on the 7 & 8 *W. c.* 6.

TO J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace in and for the county of* ——— A. I. *of* ——— *in the ſaid county, clerk, humbly complaineth,*

That he the ſaid complainant did by the ſpace of 20 *days and upwards before the day of the date hereof, demand of* A. O. *of* ——— *in the pariſh of* ——— *in the county aforeſaid, yeoman, the ſmall tithes, offerings, oblations, and obventions juſtly become due within two years now laſt paſt, from him the ſaid* A. O. *unto him the ſaid complainant, to the value of* 4 l.

and that he the said A. O. *did upon the said demand refuse, and doth yet refuse, to pay and compound for, and hath not paid nor compounded for the same, or any part thereof: The said complainant therefore prayeth such redress in the premisses, as to you shall seem meet, and as to the law doth appertain. Signed the* ——— *day of* ——— *in the* ——— *year of* ———.

A. I.

Summons for small tithes; on the 7 & 8 *W. c.* 6.

Westmorland. { To the constable of ———.

WHEREAS *complaint in writing hath been made unto us* ——— *two of his majesty's justices of the peace for the said county, by* A. I. *of* ——— *in the said county, clerk, that* A. O. *of* ——— *in the parish of* ——— *in the said county, yeoman, hath for above the space of* 20 *days before the time of the said complaint so made unto us as aforesaid, refused to compound for, or to pay unto him the said* A. I. *and hath not yet compounded for, nor paid, the small tithes, offerings, oblations, and obventions, justly due from him the said* A. O. *to him the said* A. I. *These are therefore to command you forthwith, upon sight hereof, to summon the said* A. O. *to appear before us at the house of* ——— *in* ——— *in the said county, on* Saturday *the* ——— *day of this present month of* ——— *at the hour of* ——— *in the forenoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the premisses. Given under our hands and seals at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of* ———.

Order for payment of small tithes; on the 7 & 8 *W. c.* 6.

Westmorland. WHEREAS *complaint in writing hath been made unto us* ——— *two of his majesty's justices of the peace for the said county, by* A. I. *vicar of the parish of* ——— *in the said county, that* A. O. *of* ——— *in the said parish of* ——— *in the county aforesaid, yeoman, did refuse for the space of* 20 *days next before the*

the time of the said complaint so made unto us as aforesaid, to pay or compound for his small tithes, offerings, oblations, and obventions, arising in the said parish of ——— and due to him the said A. I. *We therefore the said justices, being neither of us patron of the parish church of ——— aforesaid, nor any ways interested in any of the said tithes, offerings, oblations, or obventions, having duly summoned the said* A. O. *before us, and having duly examined the truth and justice of the said complaint upon oath, do find that there is justly due from the said* A. O. *to the said* A. I. *the sum of* 4 l. *being the value of the said tithes, offerings, oblations, and obventions, become due within two years last past; and do therefore adjudge and order the aforesaid* A. O. *to pay or cause to be paid unto the said* A. I. *the aforesaid sum of* 4 l. *and also the sum of* 10 s. *for the costs and charges of the said* A. I. *in prosecuting the said* A. O. *for the recovery of his said just dues. Given under our hands and seals at ——— in the said county, the ——— day of ——— in the ——— year of the reign of ———.*

Distress for small tithes; on the 7 & 8 *W. c.* 6.

Westmorland. { To the constable of ——— in the said county, and to the churchwardens of the parish of ——— in the said county, and to every of them.

WHEREAS *upon the complaint in writing of* A. I. *vicar of the parish of ——— aforesaid, in the county aforesaid,* A. O. *of ——— in the said parish, in the county aforesaid, yeoman, hath been duly summoned to appear before us ——— two of his majesty's justices of the peace for the said county, to be examined for the non-payment of the small tithes, offerings, oblations, and obventions, due unto the said* A. I. *And whereas we the said justices, being neither of us patron of the parish church of ——— aforesaid, nor any way interested in any of the said tithes, offerings, oblations, or obventions, have duly examined the truth and justice of the said complaint, and have ordered him the said* A. O. *to pay unto the said* A. I. *the sum of* 4 l. *being the value of the small tithes, offerings, oblations, and obventions, become due from him the said* A. O. *to him the said* A. I. *within two years next before the said complaint so made unto us as aforesaid, together with the sum of* 10 s. *for the costs and charges of the said* A. I. *for the recovery of his said just dues; making in the whole the sum*

of 4 l. 10 s. *And whereas it appeareth unto us the said justices, that the said* A. O. *had due notice of our said order for the space of ten days and upwards before the day of the date hereof, but hath refused to pay, and hath not yet paid the sum of* 4 l. 10 s. *nor any part thereof: These are therefore to command you, jointly and severally, that you, or some or one of you, do forthwith distrain the goods and chattels of the said* A. O. *and in case the said sum of* 4 l. 10 s. *together with your reasonable charges of making and detaining the said distress, be not paid, or tendered to be paid by him the said* A. O. *in* [*four*] *days next after such distress made, that then you do make publick sale of the said goods and chattels so distrained as aforesaid, and out of the money arising from such sale, that you pay or cause to be paid unto him the said* A. I. *the said sum of* 4 l. 10 s. *and there out also deduct and detain your reasonable charges of making, keeping, and selling the said distress; and if any overplus shall remain, after such payment and deduction as aforesaid, that then you do render the same unto him the said* A. O. *upon demand. Given under our hands and seals at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of* ———.

Summons of a quaker for tithes; on the 7 & 8 *W. c.* 34. and 1 *G. st.* 2. *c.* 6.

Westmorland. { To the constable of — in the said county.

WHEREAS A. I. *clerk, rector of the parish church of* ——— *in the said county, hath complained unto us* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, that* A. O. *of* ——— *in the parish of* ——— *aforesaid, in the county aforesaid, yeoman, being a person commonly called a quaker, hath refused to pay unto him the said* A. I. *or to compound for the tithes, and other rights, dues, and payments belonging to the church of* ——— *aforesaid, and justly due to him the said* A. I. *from him the said* A. O. *These are therefore to require you forthwith to summon the said* A. O. *to appear before us at the house of* ——— *in* ——— *in the said county, on* Saturday *the* ——— *day of this present month of* ——— *at the hour of* ——— *in the forenoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done*

done in the premiſſes. Given under our hands and ſeals at ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Order for quakers tithes; on the 7 & 8 *W. c.* 34. and 1 *G. ſt.* 2. *c.* 6.

Weſtmorland. WHEREAS *complaint hath been made unto us* ——— *two of his majeſty's juſtices of the peace for the ſaid county, by* A. I. *vicar of the pariſh of* ——— *in the ſaid county, that* A. O. *of the pariſh of* ——— *aforeſaid in the county aforeſaid, being a perſon commonly called a quaker, hath refuſed to pay to, or to compound with him the ſaid* A. I. *for his tithes, and other rights, dues, and payments, belonging to the church of* ——— *aforeſaid, and juſtly due unto him the ſaid* A. I. *We therefore the ſaid juſtices, being neither of us patron of the pariſh church of* ——— *aforeſaid, nor any way intereſted in any of the ſaid tithes, rights, dues, or other payments, having duly ſummoned the ſaid* A. O. *before us, and having alſo duly examined the truth of the ſaid complaint upon oath, do find that there is juſtly due for the ſame from the ſaid* A. O. *to him the ſaid* A. I. *the ſum of* 10*l.* *and do order and appoint the aforeſaid* A. O. *to pay or cauſe to be paid unto him the ſaid* A. I. *the aforeſaid ſum of* 10*l.* *And we do alſo order and appoint the aforeſaid* A. O. *to pay or cauſe to be paid unto him the ſaid* A. I. *the further ſum of* 10*s.* *for ſuch coſts and charges concerning the premiſſes as upon the merits of the cauſe do appear to us juſt and reaſonable. Given under our hands and ſeals at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Diſtreſs for quakers tithes; on the 7 & 8 *W. c.* 34. and 1 *G. ſt.* 2. *c.* 6.

Weſtmorland. { To the conſtable of ———.

WHEREAS *upon the complaint of* A. I. *vicar of the pariſh church of* ——— *in the ſaid county,* A. O. *of* ——— *in the pariſh aforeſaid, in the county aforeſaid, yeoman, being a perſon commonly called a quaker, hath been duly*

duly summoned to appear before J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, to be examined for non-payment of his tithes, and other rights, dues, and payments, belonging to the church of* ——— *aforesaid, due unto him the said* A. I. *from him the said* A. O. *And whereas the said justices, upon examination thereof, have ordered him the said* A. O. *by writing under their hands and seals, to pay unto the said* A. I. *the sum of* 10 l. *for such his tithes, and other rights, dues, and payments as aforesaid, and moreover the sum of* 10 s. *for the charges of him the said* A. I. *in recovering the same, making in the whole the sum of* 10 l. 10 s. *And whereas it appeareth unto me* J. P. *esquire, being one of the said justices, and also being one of the two next justices to the parish church of* ——— *aforesaid, in the county aforesaid, not being patron of the said church, nor any way interested in any of the said tithes, or other rights, dues, or payments, that the said* A. O. *hath had due notice of the said order, but hath refused, and doth refuse to pay, and hath not paid the said sum of* 10 l. 10 s. *nor any part thereof: These are therefore to authorize and command you, that you do forthwith levy the aforesaid sum of* 10 l. 10 s. *by distress and sale of the goods and chattels of him the said* A. O. *and out of the money arising from such sale, that you do pay or cause to be paid unto him the said* A. I. *the said sum of* 10 l. 10 s. *and thereout also deduct your necessary charges of distraining. And if any overplus shall remain, after such payment and deduction as aforesaid, that you do render the same unto him the said* A. O. *Given under my hand and seal at* ——— *in the said county, the* ——— *day of* ———*in the* ——— *year of the reign of* ———.

Tobacco.

Concerning the exporting of tobacco pipe clay, see **Woollen Manufacture.**

Planting tobacco.

1. NO person shall plant any tobacco; on pain of forfeiting the same, or the value thereof, or 40 *s.* for every rod or pole of ground planted with it, half to the king, and half to him that shall sue in any court of record. 12 *C.* 2. *c.* 34. *s.* 1. And besides the said penalty, he shall more-

moreover forfeit 10 *l.* for every rod or pole; one third to the king, one third to the poor, and one third to him that ſhall ſue in like manner. 15 *C.* 2. *c.* 7. *ſ.* 18.

And by the ſaid act of the 15 *C.* 2. *c.* 7. (which by the 5 *G.* *c.* 11. is continued along with the act of tonnage and poundage of the 12 *C.* 2. *c.* 4.) the juſtices ſhall a month before every ſeſſions, iſſue their warrants to all high and petty conſtables, to ſearch what tobacco is planted, cured, or made, and by whom; and to make preſentment in writing on oath at the next ſeſſions, of the names of ſuch perſons as have planted, cured, or made any tobacco, and what quantity of land is or was planted, and who are the tenants or occupiers thereof, (who ſhall alſo be deemed the planters). *ſ.* 2.

Which preſentment ſhall be filed by the clerk of the peace in open ſeſſions; and after ſuch filing, ſhall be a ſufficient conviction in law of the perſons preſented, unleſs ſuch perſon preſented (having notice given to him of the preſentment by delivery of a copy thereof to him, or leaving ſuch copy at his uſual place of abode in the preſence of one witneſs, ten days before the next quarter ſeſſions) ſhall at the next ſeſſions after ſuch notices traverſe the preſentment, and find ſureties for proſecuting and trying ſuch traverſe at the quarter ſeſſions next after ſuch traverſe entred or made. *ſ.* 3.

And all conſtables, bailiffs, and other publick officers, ſhall within 14 days after warrant from two juſtices, calling to their aſſiſtance whom they ſhall find neceſſary, pluck up, burn, conſume, tear in pieces, and utterly deſtroy all tobacco ſeed, plant, and leaf planted, ſowed, or growing in any field or ground. *ſ.* 4.

And if any tobacco ſhall be ſuffered to grow, or be conſumed in ſeed, plant, or leaf, by the ſpace of 14 days after receipt of ſuch warrant by the ſaid conſtables or other officers; they ſhall for every offence forfeit 5 *s.* for every rod, perch, or pole of ground planted with tobacco, and ſo proportionably for a greater or leſſer quantity, half to the king, and half to him that ſhall ſue. *ſ.* 5.

And if any ſhall refuſe or neglect to aſſiſt the conſtable, he ſhall on conviction before two juſtices, forfeit 5 *s.* to be levied by warrant of the ſaid juſtices by diſtreſs; and if no diſtreſs can be found, to be committed to the common gaol for one week. *ſ.* 6.

And if any perſon ſhall reſiſt the conſtable or other perſon in the due execution hereof, he ſhall, on conviction before

two

two juſtices, forfeit 5 *l.* by warrant of the ſaid juſtices by diſtreſs; and if no diſtreſs can be found, to be committed to the common gaol for three months. *ſ.* 7.

But nothing herein ſhall hinder planting the ſame in gardens for phyſick or chirurgery, ſo as the quantity planted exceed not half a pole of ground. 12 *C.* 2. *c.* 34. *ſ.* 4. 22. & 23 *C.* 2. *c.* 26. *ſ.* 9.

Adulterating tobacco and ſnuff.

2. Every perſon who ſhall cut any walnut, hop, ſycomore, or other leaves, or any other herbs, plants, or materials (not being tobacco leaves or plants), or ſhall colour or cure any ſuch, to make the ſame reſemble tobacco; or ſhall ſell the ſame mixed or unmixed for tobacco, ——ſhall forfeit 5 *s.* a pound, half to the king (charges of the proſecution firſt deducted), and half with full coſts to him who ſhall ſue. 1 *G. ſt.* 2. *c.* 46. *ſ.* 1.

And every perſon who ſhall make, mix, or colour any ſnuff, with oker, umber, or other colouring, except water tinged with *Venetian* red only; or ſhall mix with ſnuff any fuſtick or yellow ebony, touchwood, or other wood, or any dirt, ſand, or ſmall tobacco ſifted from tobacco,—ſhall forfeit the ſame, and 3 *l.* for every pound weight, half to the king, and half to him that ſhall ſue. 1 *G. ſt.* 2. *c.* 46. *ſ.* 7. 5 *G. c.* 11. *ſ.* 22.

And all ſuch leaves and other materials, and all engines, utenſils, and tools for working the ſame, may be ſearched for and ſeized, by warrant of three commiſſioners of the treaſury or of the cuſtoms. 1 *G. ſt.* 2. *c.* 46. *ſ.* 3.

But no houſe or warehouſe ſhall be opened to ſearch for or ſeize the ſame, but at ſeaſonable hours, and not without a ſpecial warrant from two juſtices of the peace. *ſ.* 4.

And the ſaid materials or engines found and ſeized within ſix miles of any port, ſhall be brought to the next cuſtom-houſe warehouſe; and if at a greater diſtance from any port, ſhall be ſecured by order of two juſtices at the king's charge, till the cauſe of ſuch ſeizure ſhall be determined at the next, or at fartheſt the ſecond quarter ſeſſions after ſeizure; and the ſame, after condemnation or recovery by judgment of ſuch ſeſſions, ſhall be openly burned or deſtroyed by order of the ſame, at his majeſty's charge. *ſ.* 4.

And any ſervant employed in manufacturing or ſelling ſuch leaves or materials, ſhall on conviction before two juſtices, by oath of one witneſs, be committed to the com-

mon

mon gaol or houſe of correction, to be kept to hard labour not exceeding ſix months. *ſ.* 5.

3. If any tobacco ſtalks or ſtems, ſtript from the leaf, ſhall be imported; the ſame ſhall be forfeited, and burned; and the officer ſeizing the ſame ſhall be allowed 1 *d.* a pound; and every perſon who ſhall be aſſiſting or otherwiſe concerned in unſhipping the ſame, or to whoſe hands they ſhall knowingly come after unſhipping, ſhall forfeit treble value, together with the veſſels, bags, caſks, or other things wherein the ſame are contained, and the horſes, cattle, carts, and other carriages made uſe in removing the ſame; half to the king, and half to ſuch officer of the cuſtoms who ſhall ſeize, inform, or ſue for the ſame. And the ſaid veſſels (not exceeding 15 tons), horſes, and other cattle, and carriages, may be proſecuted and determined before two juſtices reſiding near where the ſeizure was made. 12 *G. c.* 28. *ſ.* 13. 5 *G.* 3. *c.* 43. *ſ.* 4, 6. 8 *G. c.* 18. *ſ.* 16. Importing tobacco ſtalks.

4. By the 24 *G.* 2. *c.* 41. and the 26 *G.* 2. *c.* 13. No tobacco or ſtalks, exceeding 24 *lb.* weight, nor any ſnuff exceeding 10 *lb.* ſhall be conveyed by land; unleſs, if it is *unmanufactured tobacco*, a certificate be firſt had from the officers at the port of importation, together with the *importer's* oath thereto, that the duties were paid or ſecured at the importation, and when, and in what veſſel it was imported; and if the perſon applying for the certificate be a *purchaſer from the importer*, then on his oath, atteſting the marks and numbers of the identical hogſheads purchaſed, or out of which the tobacco was taken, and from whom purchaſed, and when; and if he be a *ſecond purchaſer*, then on his oath in like manner, provided that if it is an entire hogſhead, the name of the ſeller may be omitted in ſuch certificate. Carrying tobacco or ſnuff by land.

And if it is *tobacco ſtalks or ſnuff, or other manufactured tobacco*, then not without a certificate and oath of the *importer* being firſt had, that ſuch ſtalks were ſtripped, or ſnuff or other manufactured tobacco, was made from one or more hogſheads, for which the duties were paid or ſecured at the importation; and if the perſon applying for the certificate be a *purchaſer*, he ſhall make oath that ſuch ſtalks were ſtripped, or ſuch ſnuff or other manufactured tobacco was made from one or more hogſheads, which had been delivered and received according to the directions of the ſaid act of the 24 *G.* 2.

And before any ſuch tobacco, or ſtalks, or ſnuff, ſhall be removed by land, the proprietor or his agent ſhall inſert on the back of the certificate, the package, with the marks and numbers ſet thereon, and the weight of each ſpecies of goods contained in each package, and the place from whence, and to which they are to be carried, and by whom, or the inn from whence, and to whom conſigned; and ſhall ſubſcribe his name, and make oath to the truth thereof; and the certificate ſhall expreſs the number of days it ſhall continue in force, and ſhall accompany the goods; and upon its arrival, the owner of the goods ſhall deliver it to the chief officer of the cuſtoms; and if there be none ſuch, then to the officers of exciſe, who ſhall examine the ſame with the goods, and if they agree, the goods may be taken away by the owner, and the officer ſhall thereupon enter ſuch certificate in a book for that purpoſe, and tranſmit an account thereof to the officer appointed by the treaſury for keeping ſuch accounts.

And if any tobacco, or ſtalks, exceeding 24 *lb.* or ſnuff exceeding 10 *lb.* ſhall be found removing by land from the port of importation, without having one or other of the certificates before directed; the ſame together with the packages, horſes, and carriages ſhall be forfeited; and the carrier ſhall beſides be committed to the county gaol for one month by one juſtice where the offence ſhall be committed, or the offender ſhall be found.

And any officer of the cuſtoms or exciſe may ſeize the ſame, and proſecute; and the proof that the ſame had been removed with a proper certificate, and that the duties had been paid or ſecured, ſhall be on the claimer, and not on the officer.

And no tobacco or ſtalks exceeding 24 *lb.* nor ſnuff exceeding 10 *lb.* which ſhall have been *carried coaſtwiſe*, from the port of importation to any other place, ſhall be removed from thence by land, without a certificate from the officers of the port to which they were carried coaſtwiſe, that it appears to them by the entries of the certificates in their books which came with the goods from the place of importation, that the duties were paid, and alſo in what veſſel they were brought, and when, and alſo that the perſon applying to them for the ſame, had made oath to the truth thereof: and before ſuch goods ſhall be removed by land, the proprietor or his agent ſhall inſert on the back of the certificate, the names of each package, with the marks and numbers thereon, and the weight of each ſpecies in each

each package, and the place from and to which they are to be carried, and the name of the perſon to whom ſent, and ſhall ſubſcribe his name, and make oath to the truth thereof: And if any ſuch goods ſhall be found removing without ſuch certificate, or if it appear that ſuch certificate is forged; the goods, package, horſes, and carriages ſhall be forfeited, and the carrier ſhall alſo forfeit 10 *l.* and be committed to the county gaol for one month, by one juſtice where the offence ſhall be committed, or the offender ſhall be found.

And no tobacco or ſtalks exceeding 24 *lb.* nor ſnuff exceeding 10 *lb.* ſhall be conveyed by land, unleſs the package be marked on the outſide, with the reſpective words, *tobacco*, *tobacco ſtalks*, or *ſnuff*, in letters not leſs than three inches in length; on pain of forfeiture of the ſame, with the package, and 1 *s.* a pound to be paid by the owner.

The ſaid penalties to be half to the king, and half to him that ſhall ſue in any of the courts at Weſtminſter.

And by the 5 *G.* 3. *c.* 43. the ſeiſure of the ſaid horſes and carriages may be proſecuted and determined before two juſtices reſiding near where the ſeizure was made. *ſ.* 6.

Toll. See Miller.

Torn.

1. THE ſheriff's torn is the king's court of record, holden before the ſheriff, for redreſſing of common grievances within the county. 2 *Haw.* 55. Torn, what.

2. And foraſmuch as the ſheriff did go in circuit twice every year, throughout every hundred within the county, it was called *tour*, or *tourn*, which ſignifieth a circuit or perambulation. 2 *Inſt.* 70. Meaning of the word.

3. By the 31 *Ed.* 3. *ſt.* 1. *c.* 15. The ſheriff ſhall make his turn yearly, once within a month after *Eaſter*, and another time within a month after *Michaelmas*; and if he holds it in other manner, he ſhall loſe his turn for When to be holden.

the time; that is, the court ſo holden for that time ſhall be void, and the ſheriff ſhall loſe the profit thereof. 2 *Inſt.* 71.

And he ſhall keep his turn no where but in due place and accuſtomed. 9 *H.* 3. *c.* 35.

Who are to appear at the torn.

4. Peers, clergymen, and tenants in ancient demeſne, are privileged from appearing at the torn. 52 *H.* 3. *c.* 10. 2 *Haw.* 57.

Alſo they that have hundreds of their own ſhall not be bound to appear at the torn, but in the bailiwicks where they be dwelling. 52 *H.* 3. *c.* 10.

But all other perſons, being above the age of 12 years, are bound to attend at ſuch courts, in order to make inquiry of all common grievances, and alſo to give ſecurity to the publick for their good behaviour, by taking an oath to be faithful to the king, and to obſerve his laws, and alſo by incorporating themſelves into ſome free pledge or tithing which formerly ſignified a certain number of families living together in the ſame precinct, the maſters whereof were every one of them mutually bound for each other, and puniſhable for the default of any member of any ſuch family, in not appearing to anſwer for himſelf on any accuſation made againſt him. 2 *Haw.* 55.

Jurors in the torn.

5. No bailiff, or other officer, ſhall return or impanel any perſon upon an inquiſition in the torn, but ſuch as be of good name and fame, and have 20 *s.* a year freehold within the ſhire, or 26 *s.* 8 *d.* cuſtomary or copyhold; on pain of 40 *s.* and the ſheriff other 40 *s.* half to the king, and half to him that will ſue; and an indictment otherwiſe taken ſhall be void. 1 *R.* 3. *c.* 4.

But if the party except not to it upon his arraignment, he is concluded by that omiſſion. 2 *H. H.* 70.

And the jury ſhall put their ſeals to their inquiſitions. 13 *Ed.* 1. *c.* 13.

Indictment to be indented.

6. And indictments in the torn ſhall be by roll indented, one part to remain with the indictors, and the other with him that taketh the inqueſt. 1 *Ed.* 3. *c.* 17.

Diſtreſs and ſale.

7. It ſeems to be ſettled at this day, that a diſtreſs is incident of common right to every fine and amerciament in the torn; and that the offender's goods may be diſtrained in any lands within the precinct of the court, or in the highway; and that the goods diſtrained may be ſold. But the bailiff muſt have a ſpecial warrant to make diſtreſs. 2 *Haw.* 60, 61.

Or the fine may be recovered by action of debt. 2 *Haw.* 61.

8. But no offence is cognizable in the torn, unless it arise since the holding of the last court. 2 *Haw.* 66. Within what time offences are cognizable in the torn.

9. It seems to be agreed, that a presentment in the torn, of any offence within the jurisdiction of the court; being neither capital, nor concerning any freehold, subjects the party to a fine or amerciament, without any traverse. 2 *Haw.* 71. Traverse.

10. By the *magna charta*, *c.* 17. The sheriff is restrained in his torn from hearing and determining indictments of felonies; yet the sheriffs did commonly make out process or precepts in nature of a *capias* to arrest the parties; but by the 1 *Ed.* 4. *c.* 2. their power of making out process upon these indictments is taken away, as well in cases of indictments of felony as other misdemeanors within their cognizance, but they are to deliver all such indictments and presentments to the next sessions, who are to make out process thereupon, and hear and determine them. 2 *H. H.* 71. Indictment to be certified to the sessions.

And the estreats of the fines thereupon shall be inrolled, and by indenture be delivered to the sheriff, to the use of him that was sheriff at the time of the indictment so taken in the torn as aforesaid. 1 *Ed.* 4. *c.* 2.

11. The constables of common right are to be chosen and sworn in the torn or leet. 2 *Haw.* 62. Constables chosen in the torn.

Trades. See **Apprentices.**

Transportation.

1. WHERE any person shall be convicted of grand or petit larceny, or any felonious stealing or taking of money or goods, within the benefit of clergy; and liable only to burning in the hand or whipping (except persons convicted for receiving or buying stolen goods, knowing them to be stolen) the court before whom he shall be convicted, or any subsequent court held with like For felonies within clergy.

authority, inſtead of ordering him to be burnt in the hand or whipt, may order him to be ſent as ſoon as conveniently may be, to ſome of his majeſty's plantations in *America*, for ſeven years; and ſhall have power to convey, transfer, and make over ſuch offender, by order of court, to the uſe of any perſon who ſhall contract for the performance of ſuch tranſportation, to him and his aſſigns, for ſeven years. 4 *G. c.* 11. *ſ.* 1. 6 *G. c.* 23. *ſ.* 1.

For felonies without benefit of clergy.

2. And where any offender ſhall be convicted of any crime, for which he is excluded the benefit of clergy, and the king ſhall be pleaſed to extend mercy to him, on condition of tranſportation to any part of *America*, and ſuch intention of mercy be ſignified by a principal ſecretary of ſtate, it ſhall be lawful for any court having proper authority, to allow ſuch offender the benefit of a pardon under the great ſeal, and to order the like transfer and conveyance, to any perſon (who will contract for the performance of ſuch tranſportation) and to his aſſigns, of ſuch offender, as alſo of any perſon convicted of receiving or buying ſtolen goods knowing them to be ſtolen, for the term of 14 years, in caſe ſuch condition of tranſportation be general, or elſe for ſuch other term as ſhall be made part of ſuch condition. 4 *G. c.* 11. *ſ.* 1.

Contract for tranſportation.

3. Every ſuch perſon, to whom any ſuch court ſhall order the offender to be transferred or conveyed, before he ſhall be delivered over to him or his aſſigns to be tranſported, ſhall contract with ſuch perſon as ſhall be ordered by the court, and give ſufficient ſecurity to the ſatisfaction of ſuch court, that he will tranſport, or cauſe to be tranſported effectually, ſuch offender, to ſuch of his majeſty's plantations in *America* as ſhall be ordered by the court, and procure an authentic certificate from the governor, or the chief cuſtom houſe officer of the place (which they ſhall give without fee) of the landing of ſuch offender (death and caſualties of the ſea excepted), and that the ſaid offender ſhall not be ſuffered to return from the ſaid place to any part of *Great Britain* or *Ireland*, by the wilful default of ſuch perſon ſo contracting, or his aſſigns. 4 *G. c.* 11. *ſ.* 3.

Perſons impowered to contract.

4. The court may appoint, if they think fit, two or more juſtices where the offender ſhall be convicted, who ſhall have power to contract with any perſon for performance of the tranſportation; and may order the like ſecurity,

ſecurity, and cauſe the felons to be delivered by the gaoler to the perſon contracting or his aſſigns; which contracts and ſecurity ſhall be certified by the juſtices who ſhall make and take the ſame, to the next court held with like authority for the place where the felon was convicted, to be filed and kept among the records of ſuch court. 6 *G.* *c.* 23. *ſ.* 2.

Bond for tranſportation.

5. And all ſecurities for tranſportation ſhall be by bond in the name of the clerk of the peace, who ſhall (by ſuch ſuit as the juſtices in ſeſſions ſhall direct) proſecute ſuch bond in his own name, and be paid ſuch coſts as he ſhall ſuſtain in ſuch ſuit for the penalty of ſuch bond, or otherwiſe howſoever by reaſon thereof, out of the publick ſtock by the treaſurer; and all money recovered on ſuch bond, ſhall be to the uſe of the county or place, and be paid to the treaſurer, and be part of the publick ſtock. 6 *G.* *c.* 23. *ſ.* 4.

Conveying to the port.

6. The perſon ſo contracting, and to whom any felon ſhall be delivered to be tranſported, or any perſon directed by the ſaid juſtices (impowered to contract as aforeſaid), or their aſſigns, may in ſuch manner as they think fit, carry and ſecure the felon, in and through any county, toward the ſea port; and if any perſon ſhall reſcue ſuch felon, or aſſiſt him in eſcaping, he ſhall be guilty of felony without benefit of clergy. 6 *G.* *c.* 23. *ſ.* 5.

Charges of tranſportation.

7. All charges in and about making the contracts, taking ſecurities, and conveying of felons in order to be tranſported, ſhall be born by the county or place for which the court was held; and the treaſurer ſhall, by order of the juſtices in ſeſſions, pay the ſame to ſuch perſons as ſhall be employed for the purpoſes aforeſaid. 6 *G.* *c.* 23. *ſ.* 3.

Eſcaping from on ſhipboard.

8. If any perſon ſhall aſſiſt any felon to attempt his eſcape, from any boat or veſſel carrying felons for tranſportation, he ſhall (being proſecuted within a year) be guilty of felony, and tranſported for ſeven years. 16 *G.* 2. *c.* 31. *ſ.* 3, 4.

Perſons tranſporting themſelves voluntarily.

9. Where any perſon of the age of 15, and under 21, ſhall be willing to be tranſported, and to enter into any ſervice in any of his majeſty's plantations in *America*, it ſhall be lawful for any merchant or other, to contract with him for ſuch ſervice, not exceeding eight years; provided ſuch perſon come before the lord mayor or a juſtice of the peace, if the contract be in *London*, or before two juſtices if elſewhere, and before him or them acknowledge ſuch conſent, and ſign the contract in his or their

preſence, and with his or their approbation. And then it ſhall be lawful for ſuch merchant or other, to tranſport ſuch perſon, and keep him according to the contract: Which ſaid contract, and approbation of ſuch magiſtrate or magiſtrates, with the tenor of ſuch contract, ſhall be certified by ſuch magiſtrate or magiſtrates to the next ſeſſions, to be regiſtred by the clerk of the peace without fee. 4 *G. c.* 11. *ſ.* 5.

Returning from tranſportation.

10. And if any offender ſo ordered to be tranſported, ſhall return into *Great Britain* or *Ireland*, before the end of his term, he ſhall be liable to be puniſhed as a perſon attainted of felony without benefit of clergy, and execution ſhall be awarded againſt him accordingly. 4 *G. c.* 11. *ſ.* 2.

Being at large after order or agreement for tranſportation.

11. And by the 16 *G.* 2. *c.* 15. If any felon or other offender, ordered for tranſportation, or having agreed to tranſport himſelf on certain conditions either for life or any number of years, ſhall be afterwards at large in any part of *Great Britain*, without ſome lawful cauſe, before the expiration of the term; he ſhall be guilty of felony without benefit of clergy. *ſ.* 1.

And he may be tried at the aſſizes of the county or liberty where he ſhall be apprehended, or from whence he was ordered to be tranſported; and the clerk of aſſize, and clerk of the peace, where ſuch orders of tranſportation ſhall be made, ſhall, at the requeſt of the proſecutor, or any other in the king's behalf, certify a tranſcript briefly and in a few words, containing the effect and tenor of every indictment and conviction of ſuch felon, and of the *order and contract* for tranſportation, to the judges where he ſhall be indicted (not taking for the ſame above 2 *s.* 6 *d.*) which certificate being produced in court ſhall be a ſufficient proof that ſuch perſon hath been convicted and ordered to be tranſported. 6 *G. c.* 23. *ſ.* 6, 7. 16 *G.* 2. *c.* 15. *ſ.* 2.

Order and contract] So it is in the record; But in Mr. *Hawkins*'s edition of the ſtatutes, it is *order or contract*, which may induce a miſtake: for as the words *order or contract* do imply, that a perſon may be convicted upon a certificate either of the one, or of the other, it may happen in ſuch caſe that an innocent perſon ſhall be condemned; for if a *contract* for tranſportation ſhall be certified only, and not the *order* for tranſportation, it is poſſible there may never have been any ſuch order, and then ſuch contract, being without the party's own conſent or knowledge, and without any order to ſupport it, is void.

12. And

12. And whoever ſhall diſcover, apprehend, and proſecute to conviction of felony without benefit of clergy, any ſuch offender, ſhall be intitled to a reward of 20*l.* and ſhall have the like certificate, and like payments made, without fee as any perſons may be intitled to for the apprehending, proſecuting, and convicting of highwaymen. 16 *G.* 2. *c.* 15. *ſ.* 3. Reward for apprehending ſuch perſon.

13. But the king may at any time pardon and diſpenſe with the tranſportation, and allow of the offender's return, he paying to his proprietor ſuch ſum as ſhall be adjudged reaſonable by any two juſtices of the peace within the province where ſuch proprietor dwells. And where the offender ſhall have ſerved his term, ſuch ſervice ſhall have the effect of a pardon. 4 *G.* *c.* 11. *ſ.* 2. Pardon.

Traverſe.

1. TRAVERSE took its name from the *French de traverſe*, which is no other than *de tranſverſo* in *Latin*, ſignifying, *on the other ſide*; becauſe as the indictment on the one ſide chargeth the party, ſo he on the other ſide cometh in to diſcharge himſelf. *Lamb.* 540. Traverſe, whence.

2. To traverſe an indictment then, is to take iſſue upon the chief matter thereof; which is the ſame as if one ſhall ſay, *to make contradiction*, or *to deny the point of the indictment*: As in a preſentment againſt a perſon for a highway overflowed with water, for default of ſcouring a ditch, which he, and they whoſe eſtate he hath in certain lands there, have uſed to ſcour or cleanſe; ſuch perſon may traverſe either the matter, to wit, that there is no highway there, or that the ditch is ſufficiently ſcoured; or otherwiſe he may traverſe the cauſe, to wit, that he hath not that land, or that he and they whoſe eſtate he hath have not uſed to ſcour the ditch. *Lamb.* 541. Traverſe, what.

3. And foraſmuch as in the record of one traverſe, there is at once diſcovered, the ſtyle of the ſeſſions, the indictment, the proceſs to anſwer, the traverſe itſelf, the verdict, and judgment thereupon, the proceſs of execu- Form of traverſe.

tion, the yielding of the parties, and the aſſeſſment of their fines, ſo that it alone may ſerve inſtead of all, it is judged requiſite to inſert the ſame as follows:

(Style of the ſeſſions.) Somerſet. HERETOFORE, *to wit, at the ſeſſions of the peace at* Bridgewater *in the county aforeſaid, on the* Tueſday *next before the feaſt of St.* Matthew *the apoſtle, in the* ——— *year of the reign of* ——— *by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, before* J. P. *and* K. P. *eſquires, and others their aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, as alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſame county committed, by the oath of twelve ju-*

(The indictment.) *rors it is preſented, that* John Long, *of* ——— R. M. *of* ——— *and* T. L. *of* ——— *with divers others unknown, evil doers and diſturbers of the peace of our ſaid lord the king, in a warlike manner arrayed, joined, and aſſembled, on the* ——— *day of* ——— *in the night of the ſame day, in the year aforeſaid, with force and arms, to wit, with ſwords, ſtaves, clubs, guns, and other arms, as well offenſive as defenſive, at* ——— *the cloſe of one* W. Willet, *(called* B.*) unlawfully, riotouſly, and routouſly broke and entered, and eight waggon loads of hay, to the value of* ——— *then and there being, of the goods and chattels of the ſaid* W. W. *then and there unjuſtly and unlawfully took and carried away, againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in that caſe*

(Proceſs to anſwer.) *made and provided: Whereupon it was commanded to the ſheriff, that he ſhould not omit,* &c. *but cauſe them to come to anſwer.*

(Traverſe.) *And afterwards, to wit, on the* Tueſday *aforeſaid, next before the faſt of St.* Matthew *the apoſtle, in the year aforeſaid, before the aforeſaid juſtices, came the aforeſaid* J. L. R. M. *and* T. L. *in their proper perſons, and having had the hearing of the indictment aforeſaid, ſeverally ſay, that they are thereof not guilty, and of this they put themſelves upon the country;* *and* Adam Martin, *who for our lord the king in this behalf proſecutes, in like manner,* &c. *Therefore let there come there-*

(Jury.) *upon a jury before the juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, and alſo to hear and determine,* &c. *at the ſeſſions of the peace at* Welles, *&c. on the* Tueſday *next after the* Epiphany *of our lord then next to be holden, And who,* &c. *To recognize,* &c. *Becauſe as well* &c.

(Day given.) *The ſame day is given as well to the aforeſaid* A. M. *who proſecutes,* &c. *as to the aforeſaid* J. L. R. M. *and* T. L. *&c. To*

which ſeſſions of the peace holden at W. *aforeſaid in the county aforeſaid, on the aforeſaid day,* &c. *before* —— *and their aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſame county committed, came as well the aforeſaid* A. M. *who proſecutes,* &c. *as the aforeſaid* J. L. R. M. *and* T. L. *in their proper perſons. And the jurors aforeſaid, by the ſheriff of the county aforeſaid* (Verdict.) *for this impanelled, and demanded, to wit,* A. B. C. D. *&c. likewiſe did come, who to ſay the truth concerning the premiſſes being tried and ſworn, ſay upon their oath, that the aforeſaid* J. L. R. M. *and* T. L. *are guilty, and every of them is guilty, of the treſpaſs, contempt, and riot aforeſaid, in the indictment aforeſaid above ſpecified, in manner and form as againſt them is above ſuppoſed. Therefore it is conſidered by the court, that* (Judgment.) *the aforeſaid* J. L. R. M. *and* T. L. *be taken to ſatisfy our lord the king of their fines, by occaſion of the treſpaſs, contempt, and riot aforeſaid. Which* J. L. R. M. *and* T. L. *then and* (Proceſs of exe-*there preſent in court, prayed that they to a fine with our ſaid* cution.) *lord the king, by the occaſion aforeſaid, may be admitted; and thereof they put themſelves ſeverally upon the mercy of our lord the king. And the fine of the ſame* J. L. *by the juſtices afore-* (Fine aſſeſſed.) *ſaid is aſſeſſed at* 3 l. 6 s. 8 d. *and the fine of the ſame* R. M. *is aſſeſſed at* 20 s. *and the fine of the ſame* T. L. *is aſſeſſed at* 5 l. *of good and lawful money of* Great Britain, *to the uſe and behoof of our ſaid lord the king.* Lamb. 543.

4. Every defendant indicted for a miſdemeanor, ſhould give full eight days notice of trial to the proſecutor, before the aſſizes, if the trial is to be there; if at the ſeſſions, it is uſual to give two or three days notice. *Cr. Circ.* 20, 48. Notice of trial.

Treaſon.

1. TREASON, according to Lord *Coke*, is derived from *trahir*, to betray; and trahiſon, by contraction *treaſon*, is the betraying itſelf. 3 *Inſt.* 4. Meaning of the word treaſon.

Treaſon, generally ſpoken, is intended, not of petit treaſon, but of high treaſon only. 1 *H. H.* 316.

Power of juſtices of the peace therein.

2. Notwithſtanding that treaſon and miſpriſion of treaſon are not within the letter of the commiſſion of the peace, yet inaſmuch as they are againſt the peace of the king, and of the realm, any juſtice of the peace may, either upon his own knowledge, or the complaint of others, cauſe any perſon to be apprehended for any ſuch offence. And ſuch juſtice may take the examination of the perſon ſo apprehended, and the information of all thoſe who can give any material evidence againſt him, and put the ſame in writing; and alſo bind over ſuch who are able to give any ſuch evidence, to the king's bench, or gaol delivery, and certify his proceedings to ſuch court. 2 *Haw.* 39. *Hal. Pl.* 168. 1 *H. H.* 372.

Bail.

3. And having committed the offender (for he is by no means bailable by juſtices of the peace, 3 *Ed.* 1. *c.* 15. 2 *Haw.* 99.) it may be adviſeable for him to ſend an account immediately, of all the particulars, to a ſecretary of ſtate.

Treaſon by the 25 Ed. 3.

4. By the ſtatute of the 25 *Ed.* 3. *ſt.* 5. *c.* 2. (which lord *Hale* calls a *ſacred* act; and lord *Coke* an *excellent* act, and the king who made it a *bleſſed* king, and the parliament a *bleſſed* parliament;) All treaſons which had been uncertain before, were ſettled. Which act by the 1 *Mar. ſeſſ.* 1. *c.* 1. is reinforced, and again made the only ſtandard of treaſon; and all ſtatutes, between the ſaid ſtatutes of the 25 *Ed.* 3. and 1 *Mar.* which made any offences high or petit treaſon, or miſpriſion of treaſon, are abrogated; ſo that no offence is at this day to be eſteemed high treaſon, unleſs it be either declared to be ſuch by the ſaid ſtatute of the 25 *Ed.* 3. or made ſuch by ſome ſtatute ſince the 1 *Mar.*

And therefore I ſhall firſt conſider ſuch offences as are high treaſon within the ſaid ſtatute of the 25 *Ed.* 3. and then ſuch as are made treaſon by ſtatutes ſubſequent to the ſaid ſtatute of the 1 *Mar.*

The words of the ſtatute of the 25 *Ed.* 3. as to this matter, are as follows:

Whereas divers opinions have been before this time, in what caſe treaſon ſhall be laid, and in what not; the king, at the requeſt of the lords and commons, hath made a declaration in the manner as hereafter followeth; that is to ſay, When a man doth compaſs or imagine the death of our lord the king, or of our

lady his queen, or of their eldeſt ſon and heir; or if a man do violate the king's companion (that is, his wife, 3 *Inſt.* 9.) *or the king's eldeſt daughter unmarried, or the wife of the king's eldeſt ſon and heir; or if a man do levy war againſt our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elſewhere; and thereof be probably* (proveablement, proveably) *attainted of open deed, by the people of their condition. And if a man counterfeit the king's great or privy ſeal, or his money; and if a man bring falſe money into the realm, counterfeit to the money of* England, *knowing the money to be falſe; and if a man ſlay the chancellor, treaſurer, or the king's juſtices of the one bench or the other, juſtices in eyre, or juſtices of aſſize, and all other juſtices aſſigned to hear and determine, being in their places, doing their offices.*

And by the ſtatute of the 1 *Mar. ſeſſ.* 1. *c.* 1. (which lord *Hale* calls another excellent law) *No act, deed, or offence being by act of parliament made treaſon, by words, writing, ciphering, deeds, or otherwiſe whatſoever, ſhall be adjudged to be treaſon, but only ſuch as be declared by the ſaid ſtatute of the* 25 Ed. 3. And this (he ſays) at one blow laid flat all the numerous treaſons at any time enacted ſince the 25 *Ed.* 3. 1 H. H. 308.

Of open deed.] Lord *Coke* (3 *Inſt.* 14, 140.) ſeems to be of opinion, upon the ſaid act of the 25 *Ed.* 3. that bare *words* are not a ſufficient *overt act*, or *open deed*, whereby to convict a perſon of treaſon; but that they are miſpriſion of treaſon only. So alſo lord *Hale* (1 *H. H.* 111, 118. and elſewhere throughout) ſeemeth to think, that words, unleſs put into writing, are not regularly an overt act. But Mr. *Hawkins* (1 *Haw.* 39) argues the contrary, and amongſt other reaſons for his opinion, he obſerves, that to charge a man with ſpeaking treaſon is unqueſtionably actionable, which could not be, if no words could amount to treaſon: alſo, that as in caſe of felony, he who by command or perſuaſion induceth another to commit felony, is an acceſſary in felony, ſo he who does the ſame in treaſon, is a principal traytor (there being no acceſſaries in treaſon, but all being principals); and yet ſuch perſon doth no act but by words.

And it has been the conſtant practice, ever ſince the revolution at leaſt, where a perſon by treaſonable diſcourſes hath manifeſted a deſign to murder or depoſe the king, to convict him upon ſuch evidence. And in *Lowick's* caſe,

Holt.

Holt. Ch. J. declared, that *expreſs words* were not neceſſary to convict a man of high treaſon; but if from the tenor of his diſcourſe the jury is ſatisfied he was engaged in a deſign againſt the king's life, this is ſufficient to convict the priſoner. *Read.* Treaſ. 146.

Treaſons ſince the 1 Mar.

5. Offences made treaſon ſince the 1 *Mar.* are as follows:

(1) With regard to the *pretender* —— By the 6 *An. c.* 7. If any perſon ſhall by writing or printing affirm, that the pretender hath any right to the crown, or any other perſon otherwiſe than according to act of parliament, he ſhall be guilty of high treaſon. And if any perſon ſhall by preaching, teaching, or adviſed ſpeaking affirm the ſame, he ſhall incur a præmunire.

But no perſon ſhall be proſecuted for words, unleſs oath be made thereof before a juſtice in three days; and the proſecution be within three months; and the conviction on the oath of two witneſſes.

And by the 13 *W. c.* 3. If any perſon ſhall hold any correſpondence with the pretender, or any perſon employed by him, or ſhall remit any money to his uſe, he ſhall be guilty of high treaſon. And by the 17 *G.* 2. *c.* 39. This is extended to the pretender's ſon.

(2) Offences in relation to the coin, are made treaſon by many ſtatutes; which are treated of in title Coin.

(3) Alſo there are many offences made treaſon, with regard to the popiſh uſurped juriſdiction; which are treated of under title Popery.

Acceſſaries in high treaſon.

6. In high treaſon, as hath been ſaid before, there are no acceſſaries, but all are principals; and therefore whatſoever act or conſent will make a man acceſſary to a felony before the act done, the ſame will make him a principal in caſe of high treaſon. 3 *Inſt.* 9, 21.

Proſecution to be in three years.

7. By the 7 *W. c.* 3. No perſon ſhall be proſecuted for high treaſon but within three years after the offence committed; except in the caſe of deſigning to aſſaſſinate the king's perſon.

Trial to be the next term.

8. And by the 31 *C.* 2. *c.* 2. Perſons committed for high treaſon, ſhall be indicted the next term, or next aſſize; otherwiſe they ſhall be let to bail, unleſs it appear to the court, upon oath, that the witneſſes for the king could not be produced in that time; and in ſuch caſe they ſhall be indicted the ſecond term or aſſize, or elſe diſcharged.

9. Perſons

9. Persons indicted for high treason whereby corruption of blood shall be made, or for misprision of such treason (except for counterfeiting the coin, the great seal, privy seal, privy signet or sign manual) shall have a copy of the indictment (but not the names of the witnesses) delivered to them five days before trial. 7 *W.* *c.* 3. Copy of the indictment.

10. And they shall have copies of the panel of the jurors delivered to them, two days before trial. 7 *W.* *c.* 3. Copy of the panel.

11. And shall have process of court to compel their witnesses to appear. 7 *W.* *c.* 3. Process for witnesses.

12. And moreover, after the death of the person pretending to be king of *England* by the name of *James* the third, when a person is indicted for high treason, or misprision of treason, both a copy of the indictment, and lists of the jurors, and also of the witnesses, shall be delivered to the party indicted, ten days before the trial. 7 *An.* *c.* 21. *s.* 11. List of the witnesses.

13. And such person shall have two such counsel as they shall desire assigned them by the court, who shall have access to them at reasonable times. 7 *W.* *c.* 3. Counsel.

Likewise persons impeached by the house of commons, of high treason, whereby corruption of blood shall be made, shall be admitted to make their full defence by two counsel, who shall be assigned for that purpose, in like manner as upon indictments and other prosecutions. 20 *G.* 2. *c.* 30.

14. And they shall be allowed to make their defence by witnesses on oath. 7 *W.* *c.* 3. Witnesses sworn.

15. And they shall not be attainted but on the oath of two witnesses, either both of them to the same overt act, or one of them to one, and the other of them to another overt act of the same treason; unless they shall confess, or stand mute, or refuse to plead, or challenge peremptorily above 35 of the jury. 7 *W.* *c.* 3. Two witnesses.

16. The judgment for high treason (not relating to the coin) is, That he shall be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out, and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure. 2 *Haw.* 443. Judgment.

The

The judgment of a woman for high treason, is to be drawn and burnt. 3 *Inst.* 211.

Forfeiture. 17. In the said judgment is implied forfeiture of lands and goods to the king, loss of dower, and corruption of blood. 3 *Inst.* 211.

But after the death of the pretender (and of his eldest and every other son, 17 *G.* 2. *c.* 39. *f.* 3.) no attainder for treason shall disinherit or prejudice any heir or other person, other than the offender during his life. 7 *An.* *c.* 21. *f.* 10.

Petit treason.

Petit treason, what. 1. *Moreover, there is another manner of treason, when a servant slayeth his master, or a wife her husband; or when a man secular or religious slayeth his prelate, to whom he oweth faith and obedience.* 25 Ed. 3. st. 5. c. 2.

High treason is against the king, petit treason against the subjects. 3 *Inst.* 20.

Two witnesses. 2. No person shall be convicted of petit treason, but on the oath of two witnesses, or confession. 1 *Ed.* 6. *c.* 12. *f.* 22.

Judgment. 3. The judgment against a man for petit treason is, that he shall be drawn to the place of execution, and there hanged by the neck till he be dead: The judgment against a woman is, that she shall be drawn to the place of execution, and there burnt. 2 *Haw.* 444.

Forfeiture. 4. The consequence of attainder, is, forfeiture of lands (to the lord of the fee), and of goods; loss of dower; and corruption of blood. 2 *Haw.* *c.* 49.

Accessary. 5. Although there can be no accessaries in high treason, yet in petit treason there may be accessaries both before and after. 3 *Inst.* 21.

And accessaries before the fact are ousted of clergy, by several statutes; but accessaries after the fact have their clergy in all cases of petit treason, for no statute takes it from them. 2 *H. H.* 342.

Misprision

Miſpriſion of treaſon.

1. Miſpriſion cometh of the *French* word *meſpris*, which properly ſignifieth neglect or contempt: And miſpriſion of treaſon, in legal underſtanding, ſignifieth, when one knoweth of any treaſon, though no party or conſenter to it, yet conceals it, and doth not reveal it in convenient time. 3 *Inſt.* 36. 1 *H. H.* 371. Miſpriſion, what.

2. The judgment of miſpriſion of treaſon is, to be impriſoned during life, to forfeit all his goods for ever, and the profits of his lands during life. 3 *Inſt.* 36. Judgment.

3. Every man therefore that knoweth a treaſon, ought with all ſpeed to reveal it to the king, his privy council, or other magiſtrate. *H. Pl.* 127. Caution.

4. But it ſeemeth that miſpriſion of petit treaſon is not ſubject to the judgment of miſpriſion of high treaſon, but only is puniſhable by fine and impriſonment, as in the caſe of miſpriſion of felony. 1 *H. H.* 375. Miſpriſion of petit treaſon.

Treaſure found.

1. TREASURE trove, or treaſure found, is *where any gold or ſilver, in coin, plate, or bullion, hath been of ancient time hidden, whereſoever it be found, whereof no perſon can prove any property, it doth belong to the king or to ſome other by the king's grant, or preſcription.* 3 Inſt. 132. Treaſure trove, what.

Gold or ſilver] For if it be of any other metal, it is no treaſure; and if it be no treaſure, it belongs not to the king, for it muſt be *treaſure* trove. 3 *Inſt.* 132.

Whereſoever it be found] Whether it be of ancient time hidden in the ground, or in the roof of walls, or other part of a caſtle, houſe, building, ruins, or elſewhere, ſo as the owner cannot be known. 3 *Inſt.* 132.

Belong to the king] The reaſon whereof is a rule of the common law, that ſuch goods whereof no perſon can claim any

any property, belong to the king; as wrecks, ſtrays, and the like. 3 *Inſt.* 132.

Taking treaſure trove, not felony.

2. Larceny cannot be committed of ſuch things whereof no man hath any determinate property, though the things themſelves are capable of property, as of treaſure trove, or wreck till ſeized; though he that hath them in point of franchiſe, may have a ſpecial action againſt him that takes them. 1 *H. H.* 510.

But finable.

3. The puniſhment for concealment of treaſure trove, is by fine and impriſonment. 3 *Inſt.* 133.

The coroner may inquire thereof.

4. And it belongeth to the coroner to inquire thereof. 3 *Inſt.* 133.

Concerning which it is enacted by the 4 Ed. 1. ſt. 2. that *a coroner being certified by the king's bailiffs, or other honeſt men of the country, ſhall go to the places where treaſure is ſaid to be found.* And it is further enacted in the ſame ſtatute, that *the coroner ought to inquire of treaſure that is found, who were the finders, and likewiſe who is ſuſpected thereof; and that may be well perceived, where one liveth riotouſly, haunting taverns, and hath done ſo of long time; hereupon he may be attached for this ſuſpicion, by* 4, *or* 6, *or more pledges, if he may be found.*

Alſo the ſheriff in his torn.

5. Alſo it ſeems to be agreed, that all ſeizures of treaſure trove, belonging to the king, may be inquired of in the ſheriff's torn: But it ſeems queſtionable, whether a preſcription in a court leet to inquire of ſuch ſeizure belonging to the lord of it, being a ſubject, be good or not, ſince it is againſt the general rule of the law, for the leet to take cognizance of treſpaſſes done to the private damage of the lord, becauſe that would make him his own judge. 2 *Haw.* 67.

Treaſurer.

1. BY the 12 *G.* 2. *c.* 29. the treaſurers ſhall be perſons reſident in the county or diviſion, and ſhall be appointed by the juſtices at their general or quarter ſeſſions; firſt giving ſufficient ſecurity to be accountable for the money which ſhall be paid to them in purſuance of this act (for the levying of county rates), and to pay ſuch ſums as ſhall be ordered by the juſtices in ſeſſions, and for the due and faithful execution of the truſts repoſed in them. *ſ.* 6. Treaſurer how choſen.

2. And they may continue the treaſurer from time to time in his office, and remove him at their pleaſure, and appoint another in his place; and may allow him a ſalary not exceeding 20*l.* a year, to be paid out of the county rates. 12 *G.* 2. *c.* 29. *ſ.* 11. Continuance in his office; and his ſalary.

3. And that the treaſurers may be the better amenable to the court of king's bench, with regard to the payment of the money for relief of the priſoners of the *King's Bench* and *Marſhalſea* priſons, Every perſon who ſhall be elected treaſurer of any county, ſhall in 30 days after his election tranſmit his name and place of abode to the clerk of the crown in the court of king's bench, to be by him entered or regiſtred, for which entry no fee ſhall be taken: And if ſuch treaſurer ſhall neglect or refuſe ſo to do, then upon the report of the ſaid clerk of the crown, the ſaid court may make a rule upon him, requiring his performance; which ſhall be inforced as other rules of the ſaid court, at the charge of ſuch treaſurer. 11 *G.* 2. *c.* 20. His election to be certified into the king's bench.

4. And the treaſurer ſhall keep books of entries of the ſeveral ſums by him received and paid; and ſhall deliver in a true and exact account upon oath if required of his receipts and diſburſements, diſtinguiſhing the particular uſes to which the ſeveral ſums have been applied, to the juſtices at every general or quarter ſeſſions, and ſhall lay before them the proper vouchers for the ſame: Which accounts and vouchers ſhall be depoſited with the clerk of the peace, to be kept amongſt the records, to be inſpected by any of the juſtices without fee. 12 *G.* 2. *c.* 29. *ſ.* 7, 8. His account.

5. And

And discharge. 5. And the discharge of the justices, by their order at their general or quarter sessions, shall be a sufficient release and discharge to such treasurer. 12 *G.* 2. *c.* 29. *s.* 9.

Trees. See **Wood.**

Trespass. See **Justice of the peace.**

Trial. See **Jury, Sessions.**

Trophy money. See **Militia.**

Turnips.

IF any person shall steal and take away, or maliciously pull up and destroy any turnips growing, or being in any grounds belonging to any person, and be convicted thereof (within 30 days) by confession, or oath of one witness, before one justice; he shall for the first offence pay to the owner such satisfaction for the damage, and within such time, as the justice shall appoint; and shall also pay down, upon conviction, to the overseers for the use of the poor, such sum not exceeding 10*s.* as the justice shall think fit; and if he shall not make such recompence and payment, the justice may either commit him to the house of correction for any time not exceeding one month, or order him to be whipt by the constable: And being convicted of a second offence, he shall be committed to the house of correction for three months. 23 *G.* 2. *c.* 26. *s.* 13, 14.

Turnpikes. See **Highways.**

Vagrants.

THIS title consisteth chiefly of the statute of the 17 *G.* 2. *c.* 5. commonly called the vagrant act; but in the progress thereof, the other statutes relating to vagrants are inserted in the places where they properly fall in.

I. Idle and disorderly persons.
II. Rogues and vagabonds.
III. Incorrigible rogues.
IV. Apprehending.
V. Reward for apprehending.
VI. Penalty for not apprehending.
VII. Privy search.
VIII. Examination.
IX. Whipping or imprisonment.
X. Further punishment.
XI. Conveying.
XII. What to be done with at the place to which they are sent.
XIII. Scottish *vagrants.*
XIV. Irish *vagrants.*
XV. Lunatick vagrants.
XVI. Penalty of lodging vagrants.
XVII. Children born in vagrancy.
XVIII. General penalty for hindring the execution of the vagrant act.
XIX. Charges of maintaining and conveying vagrants.
XX. Appeal.
XXI. Treble costs.
XXII. Exception of special franchises.

I. Idle and disorderly persons.

By the 7 *J. c.* 4. Idle and disorderly persons shall be sent to the house of correction; and by the 17 *G.* 2. *c.* 5. idle and disorderly persons are thus described: (1) All persons who threaten to run away, and leave their wives or chil-

dren to the pariſh. (2) All perſons who ſhall unlawfully return to the pariſh or place from whence they have been legally removed by order of two juſtices, without bringing a certificate from the pariſh or place whereunto they belong. (3) All perſons who not having wherewith to maintain themſelves, live idle without employment, and refuſe to work for the uſual and common wages given to other labourers in the like work, in the pariſhes or places where they are. (4) All perſons going about from door to door, or placing themſelves in ſtreets, highways, or paſſages, to beg or gather alms in the pariſhes or places where they dwell.——All theſe ſhall be deemed idle and diſorderly perſons. And it ſhall be lawful for one juſtice to commit ſuch offenders (being thereof convicted before him, by his own view, or confeſſion, or oath of one witneſs) to the houſe of correction, to be kept to hard labour not exceeding one month. And any perſon may apprehend, and carry before a juſtice, any ſuch perſons going about from door to door, or placing themſelves in ſtreets, highways, or paſſages, to beg alms in the pariſhes or places where they dwell; and if they ſhall reſiſt, or eſcape from the perſon apprehending them, they ſhall be puniſhed as rogues and vagabonds. And the ſaid juſtice, by warrant under his hand and ſeal, may order (A) any overſeer where ſuch offender ſhall be apprehended, to pay 5 *s.* to any perſon in ſuch pariſh or place ſo apprehending them, for every offender ſo apprehended; to be allowed in his accounts, on producing the juſtice's order, and the perſon's receipt to whom it was paid: And if the overſeer ſhall neglect or refuſe to pay the ſame, the ſaid juſtice on oath thereof, may by his warrant order the ſame to be levied by diſtreſs and ſale of his goods, and in ſuch caſe he ſhall not be allowed the ſame in his accounts. *ſ.* 1.

Note; This is another, and a quite different reward, from that which is given hereafter for apprehending rogues and vagabonds; the latter being 10 *s.* and this but 5 *s.* the latter paid by the county, but this paid by the pariſh, as a puniſhment for ſuffering their poor to beg, although within their own pariſh; for if they beg out of their pariſh, they incur a further degree of guilt, becoming thereby rogues and vagabonds.

II. Rogues and vagabonds.

An infant under the age of ſeven years, ſhall not be ſaid to be a rogue and vagabond; but ſhall be removed to its place of

of settlement, as other poor persons not vagrants. *Black.* 276.

But persons who shall be deemed rogues and vagabonds, are by the 17 *G.* 2. *c.* 5. these that follow:

(1) All persons going about as patent gatherers, or gatherers of alms, under pretences of loss by fire, or other casualty.

(2) Persons going about as collectors for prisons, goals, or hospitals.

(3) Fencers.

(4) Bearwards.

(5) Common players of interludes, and all persons who shall for hire, gain, or reward, act, represent, or perform, or cause to be acted, represented, or performed, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part therein, not being authorized by law.

(6) Minstrels.

But this shall not prejudice the heirs or assigns of *John Dutton* of *Dutton*, late of the county of *Chester*, esquire, their heirs or assigns, concerning the liberty, privilege, or inheritance, which they, their heirs or assigns now lawfully use, or ought to use within the county of *Chester*, by reason of any ancient charters of any kings of this land, or by reason of any prescription, or lawful usage, or title whatsoever.

For the understanding of which clause, we must go back so far as the reign of king *Richard* the first: *Randal Blundeville*, earl of *Chester*, towards the latter end of that king's reign, being suddenly besieged by the *Welch* in the castle of *Ruthelent* in *Flintshire*, sent to his constable of *Cheshire*, one *Roger Lacy* (for his fierceness sirnamed *Hell*), to hasten with what force he could to his relief. It happened to be on *Midsummer-day*, and a great fair then held at *Chester*. Whereupon *Roger* immediately got together a great lawless mob of fidlers, players, coblers, and the like, and marched instantly towards the earl; and the *Welch* perceiving a great multitude approaching, raised the siege and fled.

The earl being thus freed, comes back with his constable to *Chester*; and in memory of this service, by a charter grants to *Roger Lacy* and his heirs, power over all the fidlers, letchers, whores, and coblers in *Chester*.

About the latter end of the reign of king *John*, or beginning of king *Hen.* II. *Roger Lacy* being dead, his son *John Lacy* by deed granted to one *Hugh Dutton* his steward, and to his heirs, the rule and authority over all the

letchers and whores in the county, in theſe words; *Sciant præſentes et futuri, quod ego* Johannes *conſtabularius* Ceſtriæ, *dedi et conceſſi, et hac præſenti charta mea confirmavi,* Hugoni de Dutton *et hæredibus ſuis, magiſtratum omnium leccatorum et meretricum totius* Ceſterſhiriæ, *ſicut liberius illum magiſtratum teneo de comite. Salvo jure meo mihi et hæredibus meis.*

In the 14 *H.* 7. a *quo warranto* was brought againſt *Lawrence Dutton* of *Dutton*, eſquire, why he claimed all the minſtrels of *Cheſhire* and in the city of *Cheſter*, to meet before him at *Cheſter* yearly, at the feaſt of *St. John Baptiſt*, and to give unto him at the ſaid feaſt 4 ½ *d.* and why he claimed from every whore in *Cheſhire* and in the city of *Cheſter*, *officium ſuum exercente*, 4 *d.* to be paid yearly at the feaſt aforeſaid. To which he pleaded preſcription. *Sir Peter Leyceſter*'s *Antiq. Cheſh.* 141, 2. 251.

This ſame exception, as it is here, was in the vagrant acts of the 14 *Eliz. c.* 5, and 39 *Eliz. c.* 4. (now repealed.)

And in the 43 *El. c.* 9. which continued the ſaid act of the 39 *El.* the above clauſe was continued only for one year, except before the end of the ſaid year, the ſaid *John Dutton*, or his heirs, ſhould procure the lords chief juſtices and lord chief baron, or two of them, on hearing his allegations and proofs, to make certificate into the chancery, to be there inrolled, that the ſaid *John Dutton*, or his heirs, ought lawfully (if no ſtatute againſt rogues or beggars had been made) by charter, tenure, or preſcription, to have ſuch liberty of licenſing of minſtrels, as he claimeth and uſeth.

And in the 1 *J. c.* 25. the ſame clauſe was continued without limitation; ſo that it is probable ſuch proof had then been made as is abovementioned.

And under the aforeſaid grant, by ancient cuſtom, the heirs of *Dutton* to this day do claim and exerciſe a privilege and authority over all the common fidlers and minſtrels in *Cheſter*, and all *Cheſhire*; and in memory thereof, keep a yearly court at *Cheſter* on *Midſummer-day*, being *Cheſter* fair, and in a ſolemn manner ride attended through the city to St. *John Baptiſt*'s church, with all the fidlers of the county playing before the lord of *Dutton*, and then at the court renew their licences yearly; and none ought to uſe the trade or employment of a minſtrel or fidler, either within the city or county, but by an order and licence of that court. 1 *Dugd. Monaſt.* 860.

(7) *Jugglers.*

(8) All perſons pretending to be gypſies, or wandring in the habit or form of *Egyptians.*

And

And by the 1 & 2 *P. & M. c.* 4. If any perſon ſhall bring into the realm any perſons calling themſelves, or commonly called *Egyptians*; he ſhall forfeit 40 *l.* half to the king, and half to him that ſhall ſue. And if any of the ſaid perſons called *Egyptians*, ſo brought into the realm, ſhall continue within the ſame for one month, he ſhall (on conviction in the county where he was apprehended) be adjudged guilty of felony without benefit of clergy, and ſhall not be tried by a jury *per medietatem linguæ*. But this not to extend to any child not above 13 years of age; nor to charge any perſon as acceſſary to the ſaid felony.

And by the 5 *El. c.* 20. Every perſon (though not brought from beyond ſea) who ſhall be found in any company of vagabonds, commonly called, or calling themſelves *Egyptians*, or counterfeiting, transforming, or diſguiſing themſelves by their apparel, ſpeech, or other behaviour like unto them, and ſhall continue in the ſame at one time, or at ſeveral times, by the ſpace of one month, ſhall on conviction in the county where he was apprehended, be adjudged guilty of felony without benefit of clergy, and ſhall not be tried by a jury *per medietatem linguæ*. But this not to extend to any child within 14 years of age.

(9) Or pretending to have ſkill in phyſiognomy, palmeſtry, or like crafty ſcience, or to tell fortunes.

(10) Or uſing any ſubtil craft to deceive and impoſe on any of his majeſty's ſubjects.

(11) Or playing or betting at any unlawful games or plays.

(12) All perſons who run away, and leave their wives or children, whereby they become chargeable to any pariſh or place.

(13) All petty chapmen, and pedlars, wandring abroad, not being duly licenſed, or otherwiſe authoriſed by law.

(14) All perſons wandring abroad, and lodging in alehouſes, barns, out-houſes, or in the open air, not giving a good account of themſelves.

(15) All perſons wandring abroad and begging, pretending to be ſoldiers, mariners, or ſeafaring men.

But this ſhall not extend to ſoldiers wanting ſubſiſtence, having lawful certificates from their officers, or the ſecretary at war; or to mariners or ſea-faring men licenſed by ſome teſtimonial or writing under the hand and ſeal of ſome juſtice of the peace, ſetting down the time and place of their landing or diſcharge, and the place to which they are to paſs, and the names of the chief towns or places through which they are to paſs, and limiting the time of their paſ-

ſage, while they continue in the direct way to the place to which they are to paſs, and during the time ſo limited.

Which exception hath a reference to the ſtatute of the 39 *El. c.* 17. which is as follows:

All idle and wandring ſoldiers or mariners, or idle perſons which ſhall be wandring as ſoldiers and mariners, ſhall ſettle themſelves in ſome ſervice, labour, or other lawful courſe of life, without wandring, or otherwiſe repair to the places where they were born, or to their dwelling places if they have any, and there remain, betaking themſelves to ſome lawful trade or courſe of life, on pain to be reputed as felons, and to ſuffer as in caſe of felony without benefit of clergy. *ſ.* 2.

And every idle and wandring ſoldier or mariner, which coming from his captain from the ſeas, or from beyond the ſea, ſhall not have a teſtimonial under the hand of a juſtice of the peace, of or near the place where he landed, ſetting down therein the place and time when and where he landed, and the place of his dwelling or birth, unto which he is to paſs, and a convenient time therein limited for his paſſage, or having ſuch teſtimonial, ſhall wilfully exceed the time therein limited, above 14 days; and alſo as well every ſuch idle and wandring ſoldier or mariner, as every other idle perſon wandring as ſoldier or mariner, which ſhall forge or counterfeit any ſuch teſtimonial, or have with him any ſuch teſtimonial forged or counterfeited, knowing the ſame to be counterfeited or forged; in all theſe caſes, every ſuch act or acts to be felony without benefit of clergy. *ſ.* 3.

And the juſtices of aſſize, and juſtices of the peace in ſeſſions, may hear and determine all ſuch offences, and execute the offenders convicted before them, as in caſes of felony is accuſtomed; except ſome honeſt perſon valued at the laſt ſubſidy of 10 *l.* in goods, or 40 *s.* in lands, or elſe ſome honeſt freeholder, as by the ſaid juſtices ſhall be allowed, will be contented before ſuch juſtices to take ſuch offender into his ſervice for one whole year, and then before the ſaid juſtices will be bound by recognizance of 10 *l.* if he keep not the ſaid perſon for one whole year, and bring him to the next ſeſſions for the peace and gaol delivery next enſuing after the ſaid year; and if any ſuch perſon retained depart within the year, without the licence of him that ſo retained him, he ſhall be guilty of felony without benefit of clergy. *ſ.* 4.

But if any ſuch idle and wandring perſon ſhall fall ſick by the way, ſo that by reaſon of his weakneſs he cannot travel to his journey's end within the time limited in his teſtimonial,

monial, he ſhall not be within the danger of this ſtatute, ſo as he ſettle himſelf in ſome lawful courſe of life as aforeſaid, to repair as aforeſaid to the place where he was born, or was laſt abiding, within convenient time after the recovery of his ſickneſs, and there remain as aforeſaid. *ſ.* 5.

And if any ſuch ſoldier or mariner coming from the ſeas, ſhall not at the time of his landing, or in his travel to the place whereunto he is to repair, going the direct way (have wherewithal to relieve himſelf in his travels homeward), he may reſort to ſome juſtice next adjoining to the place of landing or way. and make known unto him his poverty; who upon perfect notice thereof had, may licenſe [B] him to paſs the next and direct way to the place where he is to repair, and to limit him ſo much time only, as ſhall be neceſſary for his travel thither; and in ſuch caſe, purſuing the form of ſuch licence, he may for his neceſſary relief in his travel, aſk and take the relief that any perſon ſhall willingly give him. *ſ.* 7.

Note; the above words [*have wherewithal to relieve himſelf in his travels homewards*] are brought in from the former vagrant acts, the ſame having been omitted by miſtake in the tranſcript: and yet this is the ſole clauſe in any act of parliament now in force, by which power is given to a juſtice of the peace to licenſe any perſon to beg; and of which ſuch evil uſe is often made by profligate perſons, in counterfeiting ſuch licences, and thereby abuſing the country.

Lord *Coke*, upon this ſtatute, ſpeaking of the preventing of perſons from wandring without paſſes, or with the ſame counterfeited, obſerves thereupon, that this excellent work (as he calls it) of preventing them from wandring abroad without lawful licences, is without queſtion feaſible; for upon the making of the ſaid ſtatute, and a good ſpace after, whilſt the juſtices and other officers were diligent and induſtrious, there was not a rogue to be ſeen in any part of *England*; but when the juſtices and other became remiſs, rogues ſwarmed again. 2 *Inſt.* 729.

But, in truth, the great miſchief ſeemeth to be, the ſuffering theſe perſons to wander at all: Such perſons, above all others, ought to be conveyed immediately from their place of landing or diſcharge, to their place of ſettlement, at the publick charge, for three reaſons; 1. Becauſe, if they be ſailors, they may be uſeful at the ports where they belong. 2. Becauſe otherwiſe, whether they be ſoldiers or ſailors, they become initiated into the trade of begging,

which they are never after willing to leave. 3. Becauſe being for the moſt part able and luſty, they are moſt likely to do miſchief in the country.

(16) Or pretending to go to work in harveſt.

But this ſhall not extend to any perſon going abroad to work at any lawful work in the time of harveſt, ſo as he carry with him a certificate ſigned by the miniſter and one of the churchwardens or overſeers where he ſhall inhabit, declaring that he hath a dwelling houſe or place there.

Which exception hath reference to a clauſe in the ſtatute of the 13 & 14 *C.* 2. *c.* 12. concerning ſettlements, by which 40 days inhabitancy made a ſettlement: whereby it is enacted, that it ſhall be lawful for any perſon to go into any county, pariſh or place, to work in time of harveſt, or at any time to work at any other work, ſo that he carry with him a certificate from the miniſter of the pariſh, and one churchwarden and one overſeer, that he hath a dwelling-houſe or place in which he inhabiteth, and hath left wife and children, or ſome of them there (or otherwiſe as the condition of ſuch perſon requireth) and is declared an inhabitant there; and in ſuch caſe, if he ſhall not return when his work is finiſhed, or ſhall fall ſick or impotent, it ſhall not be accounted a ſettlement.

(17) And all other perſons wandring abroad and begging —ſhall be deemed rogues and vagabonds.

III. Incorrigible rogues.

By the 17 *G.* 2. *c.* 5. Incorrigible rogues are thus deſcribed:

(1) All end gatherers offending againſt the ſtatute of the 13 *G.* being convicted of ſuch offence.

By which act of the 13 *G. c.* 23. *ſ.* 8. The offence is this; *viz.* The collecting, buying, receiving, or carrying any ends of yarn, wefts, thrums, ſhort yarn, or other refuſe of cloth, drugget, or other woollen goods; and the puniſhment of ſuch perſons is, in order to prevent their committing abuſes, by ſuch practices, in the woollen manufacture.

(2) All perſons apprehended as rogues and vagabonds, and eſcaped from the perſons apprehending them, or refuſing to go before a juſtice, or to be examined on oath before ſuch juſtice, or refuſing to be conveyed by ſuch paſs as is herein after directed, or knowingly giving a falſe account of themſelves on ſuch examination, after warning given them of their puniſhment.

(3) All

(3) All rogues or vagabonds who ſhall break or eſcape out of any houſe of correction, before the expiration of the term for which they were committed or ordered to be confined by this act.

(4) All perſons who after having been puniſhed as rogues and vagabonds, and diſcharged, ſhall again commit any of the ſaid offences:—All theſe ſhall be deemed incorrigible rogues. *ſ.* 4.

IV. Apprehending rogues.

If any perſon ſhall be found offending againſt this act, the conſtable ſhall apprehend him, and convey or cauſe him to be conveyed to a juſtice of the peace. 17 *G.* 2. *c.* 5. *ſ.* 5.

And any other perſon *may* apprehend him, and carry him to the conſtable, or to a juſtice. *id.*

V. Reward for apprehending.

If any perſon not being a conſtable, ſhall apprehend any ſuch rogue or vagabond, and ſhall deliver him to a conſtable, or convey him to a juſtice; or if any conſtable ſhall ſo apprehend and convey him, it ſhall be lawful for ſuch juſtice to reward him, by making an order (C) under hand and ſeal, upon the high conſtable, to pay 10*s.* to the perſon ſo apprehending him, within one week after demand, and producing ſuch order, and on his giving a receipt for the ſame; which ſhall be allowed by the treaſurer to ſuch high conſtable, on paſſing his accounts, and delivering ſuch order and receipt, and alſo his own receipt for the ſame to ſuch treaſurer; the treaſurer alſo to be allowed the ſame in his accounts, on producing the ſaid vouchers; and in towns corporate, and other places, where there are no high conſtables, ſuch petty conſtables ſhall pay or retain ſuch reward, and be allowed the ſame in their accounts, on producing the like vouchers. And if any high conſtable, or where there is none, ſuch petty conſtable, ſhall refuſe or neglect to pay ſuch reward on demand, ſuch juſtice by his warrant may levy the ſum of 20*s.* by diſtreſs and ſale of his goods, and thereout allow the ſaid reward, and ſuch other recompence for his trouble, loſs of time and expences, as the ſaid juſtice ſhall think fit; the overplus to be returned on demand. 17 *G.* 2. *c.* 5. *ſ.* 5.

VI. Penalty

VI. Penalty for not apprehending.

If the conſtable ſhall refuſe or neglect, to uſe his beſt endeavours, to apprehend or convey to ſome juſtice ſuch offender; or if any other perſon, being charged by any juſtice ſo to do, ſhall refuſe or neglect to uſe his beſt endeavours to apprehend and deliver to the conſtable, or to carry ſuch offender before ſome juſtice, where no conſtable can be found; he ſhall, being convicted thereof on view, or oath of one witneſs, before one juſtice, forfeit 10 *s.* to the poor, by diſtreſs. 17 *G.* 2. *c.* 5. *ſ.* 5.

VII. Privy ſearch.

The juſtices, or two of them, ſhall four times a year at leaſt, or oftener (if need be) meet in their reſpective diviſions, and by their warrant (D) command the conſtables of every hundred, pariſh, town, and hamlet, who ſhall be aſſiſted with ſufficient men, to make a general privy ſearch in one night, for the apprehending of rogues and vagabonds; and every juſtice ſhall alſo on receiving information, that rogues and vagabonds are in any place within his juriſdiction, iſſue his warrant to the conſtable to ſearch for and apprehend ſuch rogues and vagabonds, and ſuch as they ſhall find upon ſuch ſearch, they ſhall cauſe to be brought before a juſtice. 17. *G.* 2. *c.* 5 *ſ.* 6.

And by the 25 *G.* 2. *c.* 36. Two juſtices, in caſe any perſon apprehended upon a general privy ſearch, or by a ſpecial warrant, ſhall be charged before them with being a rogue and vagabond, or an idle and diſorderly perſon, or with ſuſpicion of felony (although no direct proof be then made thereof) may examine ſuch perſon on oath, as to his ſettlement, and means of livelihood; and the ſubſtance of ſuch examination ſhall be put in writing, and ſigned by ſuch perſon, and by the juſtices, and be tranſmitted to the next ſeſſions to be filed; and if ſuch perſon ſhall not ſhew, that he has a lawful way of getting his livelihood, or ſhall not procure ſome reſponſible houſekeeper to his character, and to give ſecurity (if required) for his future appearance at ſome other day to be fixed for that purpoſe, the juſtices may commit him to ſome priſon or houſe of correction, for any time not exceeding ſix days; and in the mean time order the overſeers of the poor, to advertiſe in ſome publick paper, a deſcription of his perſon, and any thing that ſhall

be found on him, or in his cuſtody, and which he ſhall be ſuſpected not to have come honeſtly by, and the place of his commitment, and the time and place appointed for his re-examination; and if no accuſation ſhall be then laid againſt him, he ſhall be diſcharged, or otherwiſe dealt with according to law. *ſ.* 12.

But by the ſhortneſs of the time limited for advertiſing him, this ſeems chiefly calculated for places within the bills of mortality.

VIII. Examination.

Where any rogues or vagabonds, apprehended by any conſtable, or ſuch other perſon as aforeſaid, ſhall be brought before a juſtice, he ſhall inform himſelf by the examination (E) upon oath of the perſon apprehended, or of any other perſon, of the condition and circumſtances of the perſon ſo apprehended, and of the pariſh or place where he was laſt legally ſettled; the ſubſtance of which ſhall be put into writing, and be ſigned by the perſon or perſons ſo examined; and the juſtice ſhall likewiſe ſign the ſame, and tranſmit it to the next ſeſſions, there to be filed and kept on record. 17 *G.* 2. *c.* 5. *ſ.* 7.

IX. Whipping, or impriſonment.

And ſuch juſtice ſhall order ſuch perſon ſo apprehended, to be publickly whipt (F) by the conſtable, petty conſtable, or ſome other perſon, to be appointed by ſuch conſtable, or petty conſtable, of the pariſh or place, where ſuch perſon was apprehended; or ſhall order him to be ſent to the houſe of correction (G) till the next ſeſſions, or for any leſs time, as ſuch juſtice ſhall think proper. 17 *G.* 2. *c.* 5. *ſ.* 7. Note, It is only here expreſſed, generally, that he ſhall be *publickly whipt:* The form and manner thereof may perhaps be beſt collected from the more eſpecial proviſions of former vagrant acts. By the 22 *H.* 8. *c.* 12. the vagrant was to be *carried to ſome market town or other place, and there tied to the end of a cart naked, and beaten with whips throughout ſuch market town or other place, till his body ſhould be bloody by reaſon of ſuch whipping.* By the 39 *El. c.* 4. he was to be *ſtripped naked from the middle upwards, and openly whipped, till his body ſhould be bloody.*

X. Fur-

X. Further puniſhment.

And where any offender againſt this act ſhall be committed to the houſe of correction till the next ſeſſions, and the juſtices at ſuch ſeſſions ſhall on examination of the circumſtances of the caſe adjudge ſuch perſon a rogue or vagabond, or an incorrigible rogue; they may order ſuch rogue or vagabond to be detained in the houſe of correction, to hard labour, for any further time, not exceeding ſix months, and ſuch incorrigible rogue for any further term not exceeding two years, nor leſs than ſix months; and during his confinement, to be whipped in ſuch a manner, and at ſuch times and place, as they ſhall think fit; and ſuch perſon may, if the ſeſſions think convenient, afterwards be ſent away by a paſs; and if ſuch perſon, being a male, is above the age of 12 years, the court may, before he is diſcharged from the houſe of correction, ſend him to be employed in his majeſty's ſervice by ſea or land; and if ſuch incorrigible rogue, ſo ordered by the ſeſſions to be detained in the houſe of correction, ſhall break out or make his eſcape, or ſhall offend again in like manner, he ſhall be guilty of felony, and be tranſported for ſeven years. 17 *G.* 2. *c.* 5. *ſ.* 9.

And by the 13 & 14 *C.* 2. *c.* 12. The juſtices in ſeſſions may tranſport ſuch rogues, vagabonds, and ſturdy beggars, as ſhall be duly convicted, and adjudged to be incorrigible. *ſ.* 23.

And by the 17 *G.* 2. *c.* 5. If the child of any vagrant, above the age of ſeven years, ſhall be committed to the houſe of correction, the juſtices in ſeſſions, if they ſee convenient, at any time before ſuch child be diſcharged, may order ſuch child to be placed out as a ſervant or apprentice, to any perſon who is willing to take ſuch child, till ſuch child ſhall be of age of 21 years, or for a leſs time: And if any offender, who was found wandering with ſuch child, ſhall be again found with the ſame child which was ſo placed out, he ſhall be deemed an incorrigible rogue. *ſ.* 24.

And where any vagrants have been committed to the houſe of correction till the next ſeſſions, if on examination of ſuch perſons no place can be found, to which they may be conveyed, the ſeſſions ſhall order them to be detained and employed in the houſe of correction, until they can provide for themſelves, or until the juſtices in ſeſſions can place them in ſome lawful calling, as ſervants, apprentices, ſoldiers, mariners, or otherwiſe, either within this realm, or in the plantations in *America*. *ſ.* 28.

XI. Con-

XI. Conveying.

After such whipping or confinement, the justice may, if he thinks convenient, by a pass (H, I) under hand and seal, cause him to be conveyed to the place of his last legal settlement; but if it cannot be found, then to the place of his birth; or if he be under the age of 14 years, and have any father or mother living, then to the place of the abode of such father or mother, there to be delivered to some churchwarden or overseer. 17 *G.* 2. *c.* 5. *s.* 7.

And the justice shall make a duplicate of the pass and examination, and sign the same: and shall afterwards transmit the duplicate of the pass, annexed to the examination, to the next sessions, there to be filed and kept on record; and shall annex the duplicate of the examination to the pass, and send it with the same; and the said pass, examination, and duplicate thereof, shall and may be read in any court of record as evidence. *s.* 8.

And the justice who shall make the pass, shall with the pass cause likewise to be delivered to the constable a note or certificate (K) ascertaining how they are to be conveyed, by horse, cart, or on foot, and what allowance such constable is to have for conveying them. *s.* 10.

And the constable who shall receive such pass and certificate, shall convey the person according to the direction of the pass, the next direct way to the place where he is ordered to be sent, if it be in the same county, riding, division, corporation, or franchise; if not, he shall deliver the said person to the constable of the first town, parish, or place, in the next county, riding, division, corporation, or franchise; in the direct way to the place whither he is to be conveyed, together with the pass and duplicate of the examination, taking his receipt for the same. And such constable shall without delay apply to some justice in the same county or division, who shall make the like certificate, and deliver it to such constable, who shall with all speed convey such person unto the first parish, town, or place in the next county or division, in the direct way to the place to which he is to be conveyed. And so from one county or division to another, till they come to the place to which such person is sent. And the constable, who shall deliver such person to the churchwarden or other person ordered to receive him, shall at the same time deliver the said pass, with the duplicate of the examination, taking their receipt for the same. *s.* 11.

And any juſtice before whom a vagrant ſhall be carried, may order him to be ſearched, and his bundles to be inſpected by the conſtable or other officer in his preſence; and if it ſhall appear that ſuch vagrant ſhall be found to have ſufficient wherewithal to pay for his paſſage, either in whole or in part, the juſtice ſhall order ſo much of the money to be paid, or other effects found upon ſuch vagrant to be ſold, and employed towards the expence of taking up and paſſing ſuch vagrant, returning the overplus, after deducting the charges of ſuch ſale. *ſ.* 12.

And the juſtices in ſeſſions ſhall limit what rates and allowances, by the mile, or otherwiſe, ſhall be made, for conveying or maintaining rogues, vagabonds, or incorrigible rogues; and make ſuch other orders for the more regular proceeding therein, as they ſhall think proper. *ſ.* 16.

And if any petty conſtable ſhall bring to any high conſtable ſuch certificate as aforeſaid, together with a receipt or note from the conſtable to whom the perſon was delivered, the ſaid high conſtable ſhall pay the rates aſcertained by ſuch certificate, taking the petty conſtable's receipt; the high conſtable to be allowed the ſame by the treaſurer on paſſing his accounts, on his delivering up ſuch certificate and receipt, and giving his own receipt for the ſame to ſuch treaſurer; the ſame to be allowed the treaſurer in his accounts, on his delivering up the vouchers aforeſaid. And if the high conſtable ſhall refuſe or neglect to pay the ſame on demand, it ſhall be lawful for one juſtice, by his warrant, to levy double the ſum by diſtreſs, and thereout to allow the petty conſtable the ſum aſcertained by the certificate, and ſuch other recompence for his trouble, loſs of time and expences, as the juſtice ſhall think fit; the overplus to be returned to the high conſtable on demand. And in cities, towns corporate, and other places where there is no high conſtable, the petty conſtable ſhall be allowed what he ſhall ſo pay purſuant to ſuch certificate, in his accounts, on delivering up ſuch vouchers: Or if any maſter of a houſe of correction ſhall deliver ſuch certificate and receipt to the treaſurer, the treaſurer ſhall pay the ſame to him, taking his receipt for the ſame, and be allowed the ſame in his accounts, on delivering up ſuch vouchers. *ſ.* 17.

And by the 26 *G.* 2. *c.* 34. Where the high conſtable hath not money in his hands ſufficient to anſwer the ſaid expences, the treaſurer ſhall pay the ſame to ſuch petty conſtable, on his producing the certificate, and ſuch other vouchers as aforeſaid. *ſ.* 2.

And

And if any petty conſtable, or governor of any houſe of correction, ſhall counterfeit any ſuch certificate or receipt, or knowingly permit any alteration to be made therein; he ſhall forfeit 50 *l.* And if he ſhall not convey, or cauſe to be conveyed, ſuch vagrants, or not deliver them to the proper perſon; or if any conſtable ſhall refuſe to receive any ſuch perſon, or to give ſuch receipt, he ſhall forfeit 20 *l.* by diſtreſs and ſale by warrant of the juſtices in ſeſſions, where the offence ſhall be committed; half to the informer, and half to the treaſurer, to be applied by him as part of the publick ſtock; returning the overplus upon demand, charges of diſtreſs being firſt ſatisfied. 17 *G.* 2. *c.* 5. *ſ.* 18.

XII. What to be done with at the place to which he is ſent.

The pariſh or place to which any rogue, vagabond, or incorrigible rogue ſhall be conveyed, ſhall employ in work, or place in ſome workhouſe or almſhouſe, the perſon ſo conveyed, until he ſhall betake himſelf to ſome ſervice or other employment: And if he ſhall refuſe to work, or not betake himſelf to ſome ſervice or other employment, the overſeers may cauſe him to be carried to ſome juſtice, to be ſent to the houſe of correction, there to be kept to hard labour. 17 *G.* 2. *c.* 5. *ſ.* 19.

But if the churchwarden or other perſon who ſhall receive any perſon ſo ſent, ſhall think the examination to be falſe, he may carry the perſon ſo ſent before a juſtice, who if he ſee cauſe, may commit ſuch perſon to the houſe of correction till the next ſeſſions; and the juſtices there, if they ſee cauſe, may deal with ſuch perſon as an incorrigible rogue: But the perſon ſo ſent, ſhall not be removed from the place to which ſent, but by order of two juſtices, in the ſame manner as other poor perſons are removed to the place of their ſettlement. *ſ.* 11.

XIII. Scottiſh *vagrants.* (L)

The conſtable of any pariſh or place, within the counties of *Cumberland*, *Northumberland*, *Durham*, or town of *Berwick*, ſhall on any perſon being ſo delivered to him by a paſs and examination, whoſe place of legal ſettlement is in *Scotland*, deliver the examination to the clerk of the peace, to be kept amongſt the records; and convey ſuch perſon with the paſs into the next adjoining ſhire, ſtewartry, or place, in that part of the united kingdom, and deliver him to ſome conſtable or other officer of the next pariſh, diſtrict,

diſtrict, or place within the ſaid ſhire, ſtewartry, or place, taking his receipt for him; and ſuch officer ſhall receive ſuch perſon, and give ſuch receipt, and diſpoſe of him according to law. And if any ſuch vagrant, after being ſo conveyed into *Scotland*, ſhall be found wandring, begging, or miſbehaving himſelf in *England*, he ſhall be deemed an incorrigible rogue. 17 *G.* 2. *c.* 5. *ſ.* 13.

XIV. Iriſh *vagrants.* (M)

Every maſter of a veſſel bound for *Ireland*, the *Iſles of Man*, *Jerſey*, *Guernſey*, or *Scilly*, ſhall on warrant to him directed, under the hand and ſeal of a juſtice of the place where ſuch veſſel ſhall lie (N), take on board ſuch vagrant as ſhall be expreſſed in the warrant, and convey him to ſuch place; and for the charges thereof, the conſtable who ſerves him with the warrant, ſhall pay him ſuch rate by the head, as the juſtices in ſeſſions ſhall appoint; and ſuch maſter ſhall on the back of the warrant ſign a receipt for the money ſo paid, and alſo for the vagrant ſo delivered. Which warrant ſo indorſed ſhall be produced to the juſtice who ſigned and ſealed the ſame, and upon his allowance thereof, under his hand, the money ſo paid ſhall be repaid by the county, as other money for conveying vagrants. And ſuch maſter neglecting or refuſing to tranſport ſuch vagrants, or to indorſe ſuch receipt, ſhall forfeit 5 *l.* to the poor of the pariſh or place where the offence ſhall be committed, to be levied by diſtreſs and ſale of the ſhip or any goods within the ſame, by warrant of one juſtice, returning the overplus on demand, after the penalty and charges of the ſame are ſatisfied. 17 *G.* 2. *c.* 5. *ſ.* 14.

But no maſter ſhall be compelled to take on board more than one vagrant, for every 20 tuns burden. *ſ.* 15.

XV. Lunatick vagrants.

Whereas there are ſometimes perſons, who by lunacy, or otherwiſe, are furiouſly mad, or ſo far diſordered in their ſenſes, that they may be dangerous to be permitted to go abroad, it ſhall be lawful for two juſtices where ſuch perſon ſhall be found, by their warrant (O) directed to the conſtables, churchwardens, and overſeers, or ſome of them, to cauſe ſuch perſon to be apprehended, and kept ſafely locked up in ſome ſecure place within the county, or precinct, as ſuch juſtices ſhall appoint; and, if ſuch juſtices find it neceſſary, to be there chained, if the ſettlement of

ſuch

perſon be within ſuch county or precinct; and if not, then to be ſent to the place of his laſt legal ſettlement by a paſs, *mutatis mutandis*, and ſhall be locked up or chained, by warrant of two juſtices of the place to which he is ſent: And the reaſonable charges of removing, and of keeping, maintaining and curing ſuch perſon, during ſuch reſtraint (which ſhall be during ſuch time only as ſuch lunacy or madneſs ſhall continue) ſhall be paid, ſuch charges being firſt proved upon oath, by order of two juſtices (P) directing the churchwardens, or overſeers, where any goods, chattels, lands, or tenements of ſuch perſon ſhall be, to ſeize and ſell ſo much of the goods and chattels, or receive ſo much of the annual rents of the lands and tenements, as is neceſſary to pay the ſame; and to account for what is ſo ſeized, ſold, or received, to the next ſeſſions: But if ſuch perſon hath not an eſtate to pay the ſame, over and above what is ſufficient to maintain his family, then ſuch charges ſhall be paid by the pariſh, town, or place, to which ſuch perſon belongs, by order of two juſtices, directed to the churchwardens and overſeers for that purpoſe. 17 *G.* 2. *c.* 5. *ſ.* 20.

But this ſhall not extend to reſtrain the king's prerogative, or power of the lord chancellor, or the chancellor of the county palatine of *Lancaſter*, or the chamberlain of the county palatine of *Cheſter*, concerning ſuch lunaticks; or to reſtrain or prevent any friend or relation of ſuch lunaticks, from taking them under their own care and protection. *ſ.* 21.

XVI. Penalty of lodging vagrants.

If any perſon ſhall knowingly permit any rogue, vagabond, or incorrigible rogue, to lodge or take ſhelter in his houſe, barn, or other outhouſe or building, and ſhall not apprehend and carry him before a juſtice, or give notice to the conſtable ſo to do; and ſhall be convicted thereof by confeſſion, or oath of one witneſs, before one juſtice; he ſhall forfeit not exceeding 40 *s.* nor leſs than 10 *s.* half to the informer, and half to the poor, by diſtreſs and ſale. And if any charges ſhall be brought on any pariſh or place, by means of ſuch offence, the ſame ſhall be anſwered to the ſaid pariſh or place by ſuch offender, and be levied by diſtreſs and ſale of his goods as aforeſaid; and if ſufficient diſtreſs cannot be found, ſuch offender ſhall be committed to the houſe of correction by the juſtice, for any time not exceeding one month. 17 *G.* 2. *c.* 5. *ſ.* 23.

XVII. Children born in vagrancy.

Whereas women wandring and begging are often delivered of children, in parishes and places to which they do not belong, whereby they become chargeable to the same, it is enacted, that where any such woman shall be so delivered, and become chargeable, the churchwardens or overseers may detain such woman in their custody, until they can safely convey her to a justice; who shall examine her, and commit her to the house of correction until the next sessions, who may, if they see convenient, order her to be publickly whipped, and detained in the house of correction for any further time not exceeding six months. And upon application by the churchwardens and overseers of the place where she was so delivered, the justices at such sessions shall order the treasurer to pay them such a sum, as shall be adjudged a reasonable satisfaction for the charges such place has been put to on such woman's account. And if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither for want of other settlement, by a pass, by virtue of this act; but the settlement of such woman shall be deemed the settlement of such child. 17 *G.* 2. *c.* 5. *s.* 25.

And that it may appear, that the overseers have done what was incumbent upon them, in order to avoid such settlement, it is requisite for the justice (as he ought to do in all other cases wherein he acteth as judge) to make a record (Q.) of the whole proceedings before him; which record (as it seemeth) will be the proper evidence in such case, if the settlement shall afterwards be contested.

XVII. General penalty for hindring the execution of the vagrant act.

If any constable, or other officer, or governor of any house of correction, shall be defective in his duty, in any case for which no punishment is herein before particularly provided; or if any person shall hinder the execution of this act; or shall rescue any person apprehended or passing from place to place by virtue thereof; or shall be advising, aiding or assisting to his escape; and shall be thereof convicted, on oath of one witness, before one justice, he shall forfeit not exceeding 5 *l.* nor under 10 *s.* to the poor, by distress;

diſtreſs; and if ſufficient diſtreſs cannot be found, to be committed to the houſe of correction, to be kept to hard labour, not exceeding two months. 17 *G.* 2. *c.* 5. *ſ.* 22.

XIX. Charges of maintaining and conveying vagrants.

To defray the expences of apprehending, conveying, and maintaining rogues, vagabonds, and incorrigible rogues, and defraying all other expences neceſſary for the execution of this act, not herein before provided for, the juſtices in ſeſſions may cauſe ſuch ſums as ſhall be neceſſary, to be raiſed in the ſame manner as the general county rate. 17 *G.* 2. *c.* 5. *ſ.* 33.

XX. Appeal.

Any perſon aggrieved by any act of any juſtice out of ſeſſions, in or concerning the execution of this act, may appeal to the next general or quarter ſeſſions of the county, riding, liberty, or diviſion, giving reaſonable notice thereof; whoſe order thereupon ſhall be final. 17 *G.* 2. *c.* 5. *ſ.* 26.

XXI. Treble coſts.

Perſons ſued for any thing done in the execution of this act may plead the general iſſue; and if they recover, ſhall have treble coſts. 17 *G.* 2. *c.* 5. *ſ.* 34.

XXII. Exception of ſpecial franchiſes.

In all cities and towns, where by virtue of ſpecial acts of parliament, the charge of paſſing vagrants is to be defrayed in other manner than is by this act directed; or where ſuch vagrants, by virtue of ſpecial ſtatutes, are to be apprehended and conveyed by any perſon or officer, other than thoſe named in this act, the ſame ſhall not be altered hereby: And perſons conveyed in *London*, ſhall not be delivered in any other precinct within the city, but in the next county. 17 *G.* 2. *c.* 5. *ſ.* 27.

A. Order upon the overſeer to pay 5 *s.* for apprehending a perſon begging in his own pariſh.

Weſtmorland. { To the overſeers of the poor of the pariſh of ——— in the ſaid county.

WHEREAS *it duly appears unto me* John Moore, *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that* A. O. *of* ——— *in the pariſh of* ——— *in the ſaid county, an idle and diſorderly perſon, did on the* —— *day of* ——— *go about from door to door* [or, *place himſelf in the ſtreets, highways, and paſſages*] *in the ſaid pariſh, to beg and gather alms there; and was then and there apprehended in the ſaid pariſh of* —— *by* A. A. *an inhabitant of the ſaid pariſh, and was by him brought before me in order to be dealt withal according to law: I do hereby order you, or ſome, or one of you, to pay unto the ſaid* A. A. *the ſum of* 5 s. *on demand, as a reward for apprehending the ſaid* A. O. *he producing and delivering to you this order, and giving to you a receipt for the ſaid ſum. Given under my hand and ſeal at* Grimeſhill *in the ſaid county, the* —— *day of* —— *in the* —— *year of the reign of* ———.

B. Mariner's licence to paſs unapprehended, (as intended by the ſtatute, tho' not ſufficiently expreſſed.)

Weſtmorland. { To all conſtables and others whom it may concern.

WHEREAS *it appeareth unto me* John Robinſon, *eſquire, one of his majeſty's juſtices of the peace for the ſaid county; that* A. M. *mariner, did on the* —— *day of* —— *land at* —— *in the ſaid county, that his lawful place of abode is at* ——— *and that he hath nothing wherewith to relieve himſelf in his travels thither: I do hereby licenſe him to paſs in* —— *days time, through the towns of* —— *and* —— *in the direct way to* —— *aforeſaid; and to aſk and take ſuch relief in his travel in ſuch direct way as aforeſaid, as any perſon ſhall willingly give him. Given under my hand and ſeal at* Flodder *in the ſaid county, the* —— *day of* —— *in the year of our Lord*———.

C. Order

C. Order for payment of 10 *s.* for apprehending a vagrant.

Weſtmorland. { To the high conſtable of ——

WHEREAS *it duly appeareth unto me* John Thompſon, *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. R. *a rogue and vagabond, was found wandring and begging,* [or, as the caſe ſhall be] *in the pariſh of —— in the ſaid county; which ſaid* A. R. *was this day brought before me by* A. I. *of ——— yeoman, in order to be dealt withal according to law: I do hereby order you to pay unto the ſaid* A. I. *as a reward for apprehending and bringing before me the ſaid rogue and vagabond, the ſum of* 10 *s. within one week after demand thereof made, upon his producing and delivering to you this order, and giving unto you his receipt for the ſaid ſum. Given under my hand and ſeal at* Brough *in the ſaid county, the —— day of ——*

D. Warrant for privy ſearch.

Weſtmorland. { To the high conſtable of *Lonſdale Ward* within the ſaid county.

AT *a meeting of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, held at —— for the diviſion of* Lonſdale Ward *aforeſaid, this —— day of ——— in the —— year of the reign of —— by us —— eſquires, two of the ſaid juſtices aſſembled at the ſaid meeting, being reſident, living and dwelling within the ſaid diviſion.*

We do hereby command you forthwith to iſſue your warrants to all the petty conſtables within the ſaid ward, for making a general privy ſearch for rogues and vagabonds, according to the form hereon indorſed. Given under our hands and ſeals at ——— aforeſaid, in the county aforeſaid, the day and year aforeſaid.

The form of the said high constable's warrant.

Westmorland, Lonsdale Ward } To the constable of ——

BY *virtue of a precept from his majesty's justices of the peace for the said county, acting in and for the said Ward, at their special meeting for that purpose assembled, you are hereby required in his said majesty's name, commanding and taking to your assistance sufficient men, within your constablewick (who are hereby required to assist you accordingly), to make a general privy search, in the night of the —— day of —— throughout your said constablewick, for the finding and apprehending of rogues and vagabonds: And such as you shall so find upon such search, you are to carry forthwith before some of his said majesty's justices of the peace for the said county, to be dealt withal according to law: Herein fail you not. Given under my hand, the —— day of —— in the year of our Lord ——*

Edward Cooke, *high constable.*

E. Examination of a vagrant.

Westmorland. THE *examination of* A. O. *a rogue and vagabond, taken on oath before me —— one of his majesty's justices of the peace in and for the said county, the —— day of —— in the —— year of the reign of ——*

Who on his oath saith, That he was born at —— [and so trace out the history of his life, so far forth as to ascertain his legal place of settlement.]

A. O.

Taken and signed the day and year above-written, before me the aforesaid † his mark.

J. P.

F. Warrant

F. Warrant to the conſtable for whipping a vagrant.

Weſtmorland. { To the conſtable of ——

FORASMUCH *as* A. O. *a rogue and vagabond, was this day found wandring and begging in the pariſh of* ——— *in the ſaid county, not having obtained any legal ſettlement there, and was thereupon apprehended, and is now brought before me* Henry Lowther, *clerk, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, that he may be puniſhed and dealt withal according to law: Theſe are therefore to command you to ſtrip, or cauſe to be ſtripped, the ſaid* A. O. *naked from the middle upwards, and publickly to whip, or cauſe him to be whipped, till his body be bloody; and afterwards to remove and convey the ſaid* A. O. *according to the directions of the paſs herewith delivered to you. Given under my hand and ſeal at* Lowther *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

G. Commitment of a vagrant to the houſe of correction.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

FORASMUCH *as* A. O. *a rogue and vagabond, was this day found wandring and begging in the pariſh of* ——— *in the ſaid county, not having obtained any legal ſettlement there, and was thereupon apprehended, and is now brought before me* Richard Burn, *clerk, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, that he may be puniſhed and dealt withal according to law: Theſe are therefore to command you the ſaid conſtable, to carry the ſaid* A. O. *to the ſaid houſe of correction, and deliver him to the ſaid keeper thereof, together with this warrant: And I do hereby command you the ſaid keeper to receive the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep until the next general quarter ſeſſions of the peace to be holden for the ſaid county: And*

have you him then there, together with this precept, Given under my hand and ſeal at Orton *in the ſaid county, the —— day of —— in the —— year of the reign of ——.*

H. Vagrant paſs within the ſame juriſdiction.

Weſtmorland. { To the conſtable of —— in the ſaid county, to receive and convey; and to the churchwardens, chapelwardens, or overſeers of the poor of the pariſh of —— in the ſaid county, or either of them, to receive and obey.

WHEREAS A. O. *was apprehended within the conſtablewick of —— aforeſaid, in the county aforeſaid, as a rogue and vagabond,* videlicet, —— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county (which examination is hereunto annexed) it doth appear, that —— Theſe are therefore to require you the ſaid conſtable, to convey the ſaid* A. O. *in the next direct way to the ſaid pariſh of —— within the ſaid county, and there to deliver him to ſome churchwarden, chapelwarden, or overſeer of the poor of the ſame pariſh of —— to be there provided for according to law. And you the ſaid churchwardens, chapelwardens, and overſeers of the poor, are hereby required to receive the ſaid perſon, and provide for him as aforeſaid. Given under my hand and ſeal the —— day of —— in the year of our Lord ——*

I. Vagrant paſs from county to county.

Weſtmorland. { To the conſtable of —— in the ſaid county of *W.* and alſo to all conſtables and other officers whom it may concern, to receive and convey; and to the churchwardens, chapelwardens, or overſeers of the poor of the pariſh of —— in the county of —— or either of them, to receive and obey.

WHEREAS A. O. *was apprehended in the townſhip of —— aforeſaid, in the county of* W. *aforeſaid, as*

as a rogue and vagabond, videlicet, —— *and upon examination of the said* A. O. *taken before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* W. *upon oath (which examination is hereunto annexed) it doth appear, that* —— *These are therefore to require you the said constable to convey the said* A. O. *to the town of* —— *in the county of* —— *that being the first town in the next precinct through which he ought to pass in the direct way to the said parish of* —— *in the county of* —— *to which he is to be sent, and to deliver him to the constable or other officer of such first town in such next precinct, together with this pass, and the duplicate of the examination of the said* A. O. *taking his receipt for the same. And the said* A. O. *is to be thence conveyed on in like manner to the said parish of* —— *in the county of* —— *there to be delivered to some of the churchwardens or overseers of the poor of the same parish of* —— *to be there provided for according to law. And you the said churchwardens, chapelwardens, and overseers of the poor, are hereby required to receive the said person, and provide for him as aforesaid. Given under my hand and seal the* —— *day of* —— *in the year of our lord* ——

K. The certificate, according to the directions of the statute, shall be in the form, or to the effect following.

WHEREAS *by a pass* (reciting the substance or effect of the said pass) *I* (or *we*) *do hereby order and direct the said person* (or *persons*) *to be conveyed on foot* (or, *in a cart*, or *by horse*, &c.) *to the said town* (or *parish*) *of* —— *in* —— (or other place, describing it) *in the way to such parish (town*, or *place*, as the case shall be) *in* —— *days time*; *for which the said constable* (&c.) *is to be allowed the sum of* —— *and no more. Given under my hand* (or *our hands*) *this* —— *day*, &c.

L. Vagrant paſs to *Scotland.*

Weſtmorland. { To the conſtable of —— in the ſaid county of *W.* and alſo to all conſtables and other officers whom it may concern, to receive and convey; and to all conſtables and other officers within that part of *Great Britain* called *Scotland*, whom it may concern, to receive and obey.

WHEREAS A. O. *was apprehended in the town of —— aforeſaid, in the county of* W. *aforeſaid, as a rogue and vagabond*, videlicet, —— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *upon oath (which examination is hereunto annexed), it doth appear, that his lawful place of ſettlement is in that part of* Great Britain *called* Scotland: *Theſe are therefore to require you the ſaid conſtable of —— aforeſaid, in the county of* W. *aforeſaid, to convey the ſaid* A. O. *to the town of —— in the county of —— that being the firſt town in the next precinct through which he ought to paſs, in the direct way to that part of* Great Britain *called* Scotland *aforeſaid, to which he is to be ſent, and to deliver him to the conſtable or other officer of ſuch firſt town in ſuch next precinct, together with this paſs, and the duplicate of the examination of the ſaid* A. O. *taking his receipt for the ſame; and the ſaid* A. O. *is to be thence conveyed on in like manner into the next adjoining ſhire, ſtewartry or place, in that part of* Great Britain *called* Scotland *aforeſaid, and is there to be delivered to ſome conſtable or other officer of the next pariſh, diſtrict, or place within ſuch next adjoining ſhire, ſtewartry, or place aforeſaid, taking his receipt for the ſame; and ſuch next officer in that part of* Great Britain *called* Scotland *aforeſaid, is hereby required to receive the ſaid* A. O. *and give ſuch receipt as aforeſaid, and to diſpoſe of him the ſaid* A. O. *according to law. Given under my hand and ſeal this —— day of —— in the year of our lord ——.*

M. Vagrant

M. Vagrant pafs to *Ireland.*

Weftmorland. { To the conftable of —— in the faid county; and alfo to all conftables and other officers whom it may concern, to receive and convey; and to all other officers of the peace whom it may concern, to receive and obey.

WHEREAS A. O. *was apprehended in the town of* —— *in the faid county, as a rogue and vagabond,* videlicet, —— *and upon examination of the faid* A. O. *taken before me* J. P. *efquire, one of his majefty's juftices of the peace in and for the faid county upon oath (which examination is hereunto annexed) it doth appear, that the lawful fettlement of him the faid* A. O. *is in the kingdom of* Ireland: *Thefe are therefore to require you the faid conftable of* —— *to convey the faid* A. O. *to the town of* —— *in the county of* —— *that being the firft town in the next precinct through which he ought to pafs, in the direct way to the faid kingdom of* Ireland, *to which he is to be fent, and to deliver him to the conftable or other officer of fuch firft town in fuch next precinct, together with this pafs, and the duplicate of the examination of the faid* A. O. *taking his receipt for the fame. And the faid* A. O. *is to be thence conveyed on in like manner until he fhall arrive in the county of* —— *and the conftable or other officer to whom he fhall be delivered in the faid county of* —— *is hereby required to apply to fome juftice of the peace in and for the faid county of* —— *for a warrant to the mafter of any fhip or veffel bound for the faid kingdom of* Ireland, *that fhall lie in the faid county of* —— *to take on board the faid fhip or veffel him the faid* A. O. *and convey him to fuch place in the faid kingdom of* Ireland, *as fuch fhip or veffel fhall be bound unto. Given under my hand and feal the* —— *day of* —— *in the year of our Lord* ——

N. Warrant

N. Warrant to a maſter of a ſhip to export a vagrant.

Weſtmorland. { *J. P.* eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county. To *A. M.* maſter of the ſhip called the ——— of ——— now lying or being at ——— and bound for ——— in the kingdom of *Ireland*, ſendeth greeting.

THESE *are in the name of our ſaid lord the king to require you to take on board the ſaid ſhip*, A. O. *and* B. O. *vagrants, both of them being natives of the kingdom of* Ireland *aforeſaid, and having no ſettlement in* England, *and them to convey to* ——— *aforeſaid, in the kingdom of* Ireland *aforeſaid, or to ſuch other place in that kingdom as you ſhall arrive at; and for the charges thereof you ſhall take, and* A. C. *conſtable of* —— *at the time he ſhall ſerve you with this warrant, ſhall pay, and is hereby required to pay unto you the ſum of* ——— *in the whole: that is, at the rate of* ——— *by the head, for each of the ſaid vagrants ſo to be delivered unto you, the ſame being the rate laſt appointed by the juſtices of our ſaid lord the king aſſigned to keep the peace within the ſaid county, at their general quarter ſeſſions of the peace held in and for the ſaid county. And you are, on the back of this warrant, to ſign a receipt for the money ſo paid, and alſo for the ſaid vagrants ſo delivered unto you. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

O. Warrant to ſecure a lunatick.

Weſtmorland. { To the conſtables, churchwardens, and overſeers of the poor of ———.

WHEREAS *it hath been proved before us* —— *two of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, upon the oaths of* A. W. *and* B. W. *both of the pariſh of* ——— *in the county aforeſaid, gentlemen, that* A. L. *late of* ——— *frequently goeth at large in the ſaid pariſh of* ——— *and that he the ſaid* A. L. *is by lunacy ſo far diſordered in his ſenſes, that he is dangerous to be permitted to go*

go abroad; and that his legal ſettlement is in the pariſh of —— *Theſe are therefore to authorize and require you, and every of you, to cauſe the ſaid* A. L. *to be apprehended and kept ſafely locked up in the houſe of* A. K. *at* ——— *in the ſaid county, the ſaid* A. K. *being willing to keep and entertain him the ſaid* A. L. *for a reaſonable allowance in that behalf, and the ſaid houſe being a ſecure place: And the ſaid* A. L. *is to be kept ſo locked up only ſo long as ſuch lunacy or diſorder ſhall continue, and no longer. Given under our hands and ſeals at* —— *in the ſaid county, the* —— *day of* ———.

P. Order to charge the lunatick's eſtate, with his keeping, maintenance, and cure.

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of ——— in the ſaid county.

WHEREAS A. L. *late of* —— *in the ſaid county, being a perſon lunatick, and ſo far diſordered in his ſenſes, that he was and is dangerous to be permitted to go abroad, hath by warrant under the hands and ſeals of us* ——— *two of his majeſty's juſtices of the peace for the ſaid county, been apprehended and ſafely locked up in the houſe of* A. K. *at* ——— *in the ſaid county, the ſaid houſe being a ſecure place for that purpoſe; And whereas it appears to us, on the oaths of* C. W. *churchwarden, and* O. P. *overſeer of the poor of the pariſh of* ——— *that they the ſaid churchwarden and overſeer have reaſonably expended the ſum of* ——— *in removing the ſaid* A. L. *to the ſaid houſe of the ſaid* A. K. *and in keeping, maintaining, and curing him there: Theſe are therefore to authorize and command you, to ſeize and ſell ſo much of the goods and chattels, and to receive ſo much of the annual rents of the lands and tenements of him the ſaid* A. L. *within your ſaid pariſh, as ſhall be neceſſary to pay the ſame: And for what ſhall be ſo ſeized, ſold, or received by you, you are to account at the next quarter ſeſſions of the peace to be holden for the ſaid county. Given under our hands and ſeals, at* ——— *in the ſaid county, the* ——— *day of* ———

Q. Record

Q. Record to avoid the ſettlement of a baſtard child born in vagrancy.

Weſtmorland. BE *it remembered, that on the* —— *day of* ——*in the*—— *year of the reign of our ſovereign lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. B. *and* C. D. *overſeers of the poor of the pariſh of* ——— *in the ſaid county, at* ——— *in the ſaid county, do bring unto me* ——— *one of the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, the body of one* A. P. *and do complain unto me the juſtice aforeſaid, and give me to be informed, that on the* —— *day of* ——— *in the year aforeſaid, at* ——— *in the pariſh aforeſaid, in the county aforeſaid, ſhe the ſaid* A. P. *was wandring and begging, and that ſhe the ſaid* A. P. *then and there, to wit, on the ſaid* —— *day of* ——— *at* ——— *aforeſaid, in the pariſh aforeſaid, and county aforeſaid, ſo wandring and begging, was delivered of a (male) child; and that thereby ſhe the ſaid* A. P. *hath become chargeable, and is now chargeable, to the ſaid pariſh of* ——— *and that ſhe the ſaid* A. P. *had not then, nor yet hath, any lawful ſettlement in the ſaid pariſh of* ——— *And thereupon they the ſaid overſeers of the poor of the pariſh aforeſaid, do pray of me the juſtice aforeſaid, that for themſelves, and for the other inhabitants of the pariſh aforeſaid, a due remedy may be provided, and that juſtice may be done in that behalf, according to the form of the ſtatute in that caſe made. Which complaint, information, and prayer, by me the juſtice aforeſaid being heard, I the ſaid* J. P. *at* ——— *aforeſaid, in the county aforeſaid, on the ſaid* —— *day of* ——— *in the year aforeſaid, upon the examination of the ſaid* A. P. *upon oath by me unto her upon the holy goſpel adminiſtred, and upon other lawful evidence of any teſtimony before me had and made, do find, that on the* —— *day of* ——— [and ſo on, verbatim, as is ſet forth above in the information]: *And thereupon it is conſidered by me the juſtice aforeſaid, that ſhe the ſaid* A. P. *be committed, and is by me committed to the houſe of correction at* ——— *in the county aforeſaid, until the next quarter ſeſſions of the peace to be holden within and for the ſaid county. In teſtimony whereof, I the ſaid* J. P. *the juſtice aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, the* ——— *day of* ——— *aforeſaid, in the year aforeſaid, unto this record do ſet my ſeal.*

Vellum.

Vellum. See Stamps.
Venire. See Process.
Verdict. See Jurors.
Verjuice. See Excise.
Victuallers. See Alehouses.
Vinegar. See Excise.
Unlawful Assembly. See Riot.
Wages. See Servants.
Waif. See Estray.

Warrant.

FOR a warrant to search for stolen goods, see Search Warrant.

If a justice see a felony or other breach of the peace committed in his presence, he may in his own person apprehend the felon; and so he may by word command any person to apprehend him, and such command is a good warrant without writing: but if the same be done in his absence, then he must issue his warrant in writing. 2 *H. H.* 86.

Concerning which we will shew,

I. For what causes it may be granted.
II. What is to be done previous to the granting of it.
III. How far it is grantable on suspicion.
IV. The form of it.

I. For what causes it may be granted.

There seems to be no doubt, but that a warrant may be lawfully granted by any justice, for treason, felony, or præmunire, or any other offence against the peace: Also it seems clear, that where-ever a statute gives to any one justice a jurisdiction over any offence, or a power to require

quire any perſon to do a certain thing ordained by ſuch ſtatute, it impliedly gives a power to every ſuch juſtice to make out a warrant to bring before him any perſon accuſed of ſuch offence, or compellable to do the thing ordained by ſuch ſtatute; for it cannot but be intended, that a ſtatute giving a perſon juriſdiction over an offence, doth mean alſo to give him the power incident to all courts, of compelling the party to come before him. 2 *Haw.* 84.

But in caſes where the king is no party, or where no corporal puniſhment is appointed, as in caſes for ſervants wages, and the like, it ſeemeth that a *ſummons* is the more proper proceſs; and for default of appearance the juſtice may proceed; and ſo indeed oftentimes it is directed by ſpecial ſtatutes.

II. What is to be done previous to the granting of it.

It is convenient, though not always neceſſary, that the party who demands the warrant be firſt examined on oath, touching the whole matter whereupon the warrant is demanded, and that examination put into writing. 1 *H. H.* 582. 2 *H. H.* 111.

Or at leaſt it is ſafe to bind him over to give evidence; leſt afterwards when the offender ſhall be apprehended, or ſhall ſurrender himſelf, the party that procured the warrant be gone. *Dalt. c.* 169.

III. How far it is grantable on ſuſpicion.

Lord *Hale* proves at large, contrary to the opinion of lord *Coke* (4 *Inſt.* 177.) that a juſtice hath power to iſſue a warrant to apprehend a perſon ſuſpected of felony, before he is indicted; and that though the original ſuſpicion be not in himſelf, but in the party that prays his warrant. 2 *H. H.* 107—110.

For the juſtices are judges of the reaſonableneſs of the ſuſpicion, and when they have examined the party accuſing touching the reaſons of his ſuſpicion, if they find the cauſes of ſuſpicion to be reaſonable, it is now become the juſtices ſuſpicion as well as theirs. 2 *H. H.* 80.

And in another place ſpeaking of this opinion of lord *Coke*, he delivers himſelf ſeemingly with a kind of warmth not uſual to him: I think, ſays he, the law is not ſo, and the conſtant practice in all caſes hath obtained againſt it, and it would be pernicious to the kingdom if it ſhould be as lord

Coke

Coke delivers it; for malefactors would escape unexamined and undiscovered, for a man may have a probable and strong presumption of the guilt of a person, whom yet he cannot positively swear to be guilty. 1 *H. H.* 579.

Mr. *Hawkins* likewise seems to be of the same opinion against lord *Coke*, but delivereth himself with his wonted caution and candour: It seems probable, he says, that the practice of justices of the peace in relation to this matter, is now become a law, and that a justice may justify the granting of a warrant for the arrest of any person, upon strong grounds of suspicion, for a felony or other misdemeanor, before any indictment hath been found against him; yet inasmuch as justices claim this power rather by connivance, than any express warrant of law, and since the undue execution of it may prove so highly prejudicial to the reputation as well as the liberty of the party, a justice cannot well be too tender in his proceedings of this kind, and seems to be punishable not only at the suit of the king, but also of the party grieved, if he grant any such warrant groundlessly and maliciously, without such a probable cause as might induce a candid and impartial man to suspect the party to be guilty. 2 *Haw.* 85.

But a general warrant, upon a complaint of a robbery, to apprehend *all persons suspected*, and to bring them before a justice, hath been ruled void; and false imprisonment lies against him that issues such a warrant. 1 *H. H.* 580. 2 *H. H.* 112.

IV. The form of it.

1. Mr. *Dalton* says, the warrant is the better, if it bear date of the place where it was made. *Dalt. c.* 169.

And lord *Hale* says, the place, though it must be alledged in pleading, need not be expressed in the warrant. 2 *H. H.* 111.

And Mr. *Hawkins* says, It is safe, but perhaps not necessary, in the body of the warrant to shew the place where it was made; yet it seems necessary to set forth the county, in the margin at least, if it be not set forth in the body. 2 *Haw.* 85.

2. It may be directed to the sheriff, bailiff, constable, or to any indifferent person by name who is no officer; for the justice may authorize any one to be his officer, whom he pleases to make such; yet it is most adviseable to direct it to the constable of the precinct wherein it is

to be executed, for that no other conſtable, and *à fortiori* no private perſon, is compellable to ſerve it. 2 *Haw.* 85. *Dalt. c.* 169. 2. *H. H.* 110.

But in the caſe of an act of parliament, it is ſaid, that if the act directeth that a juſtice ſhall grant a warrant, and doth not ſay to whom it ſhall be directed, by conſequence of law it muſt be directed to the conſtable, and it cannot be directed to the ſheriff, unleſs ſuch power is given in the act. *L. Raym.* 1192. 2 *Salk.* 381.

3. The warrant may be ſtiled in divers manners: As 1. In the name of the king; and yet the teſte muſt be under the name of the juſtice that grants it out. Or, 2. It may be ſtiled and made only in the name of the juſtice. Or, 3. It may be made without any ſuch ſtile, and only under the teſte of the juſtice, or only ſubſcribed by him. As followeth:

In the king's majeſty's name.

Weſtmorland. GEORGE *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth; To our ſheriff of the county of —— to the high conſtables of the hundred of —— in the ſame county, and to the petty conſtables of the town of —— in the ſame county, and to all and ſingular our bailiffs and miniſters in the ſame county, as well within liberties, as without, greeting:*

Foraſmuch as A. I. *of —— hath come before* J. P. *eſquire, one of our juſtices aſſigned to keep our peace within the ſaid county, and hath,* &c.

(Concluding it in the juſtice's name, as thus:) *Witneſs the ſaid* J. P. *at —— the —— day of ——.*

Note, That whereſoever the warrant is made in the king's name, there it ought to be directed to all miniſters, as well within liberties, as without, for that the king is made a party: And ſo it may be done in all other warrants, eſpecially for felony, or for the peace or the good behaviour, becauſe it is the ſervice of the king. *Dalt. c.* 174.

Or thus, in the name of the juſtice himſelf.

Weſtmorland. J. P. *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county; To the ſheriff of the ſaid county, to the bailiff*

bailiff or conſtables of the hundred of —— *within the ſaid county, to the petty conſtables of the town of* —— *within the ſaid hundred and county, and to all other the miniſters and officers of our ſaid lord the king within the ſaid county, and to every of them, greeting:*

Foraſmuch as, &c. *Given under my hand and ſeal the* —— *day of*, &c. Dalt. c. 174.

4. Regularly, the warrant, eſpecially if it be for the peace or good behaviour, or the like, where ſureties are to be found or required, ought to contain the ſpecial cauſe and matter, whereupon it is granted, to the intent that the party upon whom it is to be ſerved, may provide his ſureties ready, and take them with him to the juſtice to be bound for him; but if the warrant be for treaſon, murder, or felony, or other capital offence, or for great conſpiracies, rebellious aſſemblies, or the like, it hath been ſaid, that it needeth not to contain any ſpecial cauſe, but the warrant of the juſtice may be to bring the party before him, to make anſwer to ſuch things or matters generally, as ſhall be objected againſt him on the king's behalf. *Dalt. c.* 169. 2 *Haw.* 85. 2 *H. H.* 111.

But Mr. *Lambard* ſays, every warrant made by a juſtice of the peace ought to comprehend the ſpecial matter upon which it proceedeth; even as all the king's writs do bear their proper cauſe in their mouth with them: And as for the form that is commonly uſed, *to anſwer to ſuch things as ſhall be objected*, and ſuch like, they were not fetched out of the old learned precedents, but lately brought in by ſuch as either knew not, or cared not, what they writ. *Lamb.* 87.

5. The warrant ought regularly to mention the name of the party to be attached, and muſt not be left in general, or with blanks to be filled up by the party afterwards. 2 *H.* 114. *Dalt. c.* 169.

6. The warrant may iſſue to bring the party before the juſtice who granted the warrant ſpecially, and then the officer is bound to bring him before the ſame juſtice; but if the warrant be to bring him before any juſtice, then it is in the election of the officer to bring him before what juſtice of the county he thinks fit, and not in the election of the priſoner. 1 *H. H.* 582. 2 *H. H.* 112.

7. It ought to ſet forth the year and day wherein it is made, that in an action brought upon an arreſt by virtue of it, it may appear to have been prior to ſuch arreſt; and alſo, in caſe where a ſtatute directeth the proſecution to be within ſuch a time, that it may appear, that the proſecution is

commenced within such time limited: Likewise, where a penalty is given to the poor of the parish where the offence shall be committed, or the like, it ought to specify the place where the offence was committed. 2 *Haw.* 85.

8. Finally, it ought to be under the hand and seal of the justice who makes it out. 2 *Haw.* 85.

The execution of a warrant belongs to title Arrest.

Watch.

Watch and ward.

WATCHING is properly intended of the night, and warding for the day time. *Dalt. c.* 104.

Watches are of three kinds:

By the statute of Winchester.

1. That which is appointed by the statute of *Winchester*, *c.* 4. and is enforced by the 5 *H.* 4. *c.* 3. which is, *That from* Ascension day *to* Michaelmas, *in every city* 6 *men shall keep watch at every gate, in every borough* 12 *men, every town* 6 *or* 4 *according to the number of the inhabitants, and shall watch the town continually all night, from the sun setting to the sun rising.* 13 Ed. 1. st. 2. c. 4.

This watch is to be set by the constable, and their power is this: *If any stranger do pass by them, he shall be arrested until morning, and if no suspicion be found, he shall go quit; and if they find cause of suspicion, they shall forthwith deliver him to the sheriff, until he be acquitted in due manner. And if they will not obey the arrest, they shall levy hue and cry upon them.* id.

Inhabitants.] It hath been resolved, that a stranger, who is not an inhabitant, cannot hereby be compelled to keep watch. 2 *Haw.* 80.

Deliver him to the sheriff.] That is, to the common gaol. 2 *H. H.* 96.

By the constable.

2. But this watch only extends between *Ascension-day* and *Michaelmas*; but there is another watch that may be kept by the constable *ex officio*, which may extend to other times; as by the 5 *Ed.* 3. *c.* 14. for night walkers, and persons suspicious by night or day. 2 *H. H.* 97.

And although a constable is not bound to any precise time for this kind of watch, nor punishable if he omit it, barely for the omission, if he be ready upon occasion to do his office when required in these cases; yet it is in his power to hold such watches, as often as he pleases, and it is convenient

venient and juſtifiable: and herein the watchmen are the miniſters and aſſiſtants of the conſtable, and are under the ſame protection with him, and may act as he doth. 2. *H. H.* 97.

Yea it is holden, that every private perſon may by the common law arreſt any ſuſpicious night walker, and detain him till he give a good account of himſelf. 2 *Haw.* 80.

3. There is alſo another kind of watch, which is by authority of the juſtices of the peace, which alſo may be held at other times than the above ſtatute of the 13 *Ed.* 1. appoints; and the watch thus appointed hath the ſame power as either of the former: And this ſeems to be within the power of any one juſtice, by the firſt aſſignment in the commiſſion; but the ſafer way, and more uſual is, by order of ſeſſions. *Lamb.* 186. 2 *H. H.* 97. *Dalt. c.* 104. By the juſtices.

4. It ſeems to be agreed, that every inhabitant is bound to keep watch in his turn, or to find another. 2 *Haw.* 80. Who ſhall watch.

But they are not compellable to watch at the will of the conſtable, but only when their turn cometh; which was the ancient cuſtom at common law. *Dalt. c.* 104.

And the watching and warding ought to be by men able of body, and ſufficiently weaponed. *Dalt. c.* 104.

And therefore a woman required to watch, may procure one to watch for her. *Comb.* 243.

5. If a watchman take any one for ſuſpicion of felony, he may inquire of his good name and fame, and if he finds him to be of good name and fame, he may let him go, without being guilty of an eſcape. *Dalt. c.* 159. Perſons taken by watchmen.

And if a perſon will not obey the arreſt of the watchmen, they may levy hue and cry upon him, that he may be taken; or elſe they may juſtify to beat him, for that he reſiſteth the peace and juſtice of the realm; and may alſo ſet him in the ſtocks for the ſame until the morning. *Dalt. c.* 104.

And the watchmen may deliver ſuch perſons to the conſtable, or may convey them to a juſtice, to be examined, and to be bound over or committed, until they be acquitted in due manner. *Dalt. c.* 104.

6. A watchman hath a double protection of the law: 1. As an aſſiſtant to the conſtable, when the conſtable is preſent or in the watch; for ſo every man who is aſſiſting to the conſtable in the execution of his office, hath the ſame protection that the law gives the conſtable. 2. Purely as a watchman ſet by order of law; and the law takes notice of his authority *ſub eo nomine*, and therefore killing of a watchman in execution of his office, is murder. 2 *H. H.* 98. 3 *Inſt.* 52. 9 *Co.* 66. Indemnity of watchmen.

And if a watchman be killed in endeavouring to apprehend a burglar, his executors shall be intitled to 40 *l.* reward 5 *An. c.* 31. *s.* 2.

Punishment for not watching.

7. If any person refuse to watch in his turn, at the commandment of the constable, he may present the default at the assizes or sessions, or may complain thereof to any justice of the peace, who may bind the offender to the good behaviour, and so over to the next sessions. *Dalt. c.* 104. And there he may be indicted. 2 *Haw.* 80.

But here it is to be noted, that in *Cro. El.* 204. which Mr. *Dalton* cites for his authority in this matter, it is not said, that the justice may bind him to the good behaviour, but only thus,————that he may inflict punishment upon the refuser.

Warrant for the keeping of watch.

Westmorland. { To the constable of the hundred of —— in the said county.

AT *a general quarter sessions of the peace holden at —— in and for the said county, before us —— esquires, justices of our lord the king, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, you are hereby required forthwith to issue your warrants to the several petty constables within your said hundred, that they do cause watch to be kept by night and ward by day, with able men, within and throughout their respective constablewicks, from the —— day of —— now next ensuing, unto the —— day of —— then next following; and that they do apprehend, or cause to be apprehended, all rogues, vagabonds, and other wandring, idle, and disorderly persons, and carry them before some of his majesty's justices of the peace in and for the said county, to be examined and further dealt withal according to law. Given under our hands and seals, the day and year first above written.*

Com-

Commitment of a perſon apprehended by the watch.

Weſtmorland. { To the conſtable of ——— and to the keeper of the houſe of correction at ———.

WHEREAS A. O. *was yeſterday in the night taken by the watch ſet by the conſtable of —wandring abroad, and lodging in barns, outhouſes, or in the open air, and is this day brought before me* J. P. *eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, and doth not now give a good account of himſelf before me: Theſe are to require you the ſaid conſtable of ——— to convey the ſaid* A. O. *to the ſaid houſe of correction at ——— aforeſaid, and to deliver him to the keeper thereof, together with this warrant. And I do hereby require you the ſaid keeper of the houſe of correction aforeſaid, to receive the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep until the next general quarter ſeſſions of the peace to be holden in and for the ſaid county; and have you him then there, together with this precept. Given under my hand and ſeal, at ——— in the ſaid county, the ——— day of ——— in the ——— year of the reign of ———.*

Indictment for not watching.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *of ——— in the ſaid county, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— and long before, and always after unto the day of the taking of this inquiſition, was, and yet is, an inhabitant of the town of ——— aforeſaid, in the county aforeſaid, and that the ſaid* A. O. *then and there, to wit, on the ſaid ——— day of ——— in the year aforeſaid, at ——— aforeſaid, in the county aforeſaid, was duly ſummoned in his turn to watch with the conſtable of ——— aforeſaid, in the night of the ſame day; nevertheleſs the ſaid* A. O. *his duty in that behalf not regarding, did not watch in the ſaid night of the ſame day, in the year aforeſaid, nor in any part of the ſaid night, with the ſaid conſtable at ——— aforeſaid, in the county aforeſaid, but did then and there utterly refuſe ſo to do, and wilfully and obſtinately therein did make default; in contempt of our ſaid lord the king, and of his laws, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Watchmaking. See Servants.
Watermen. See Thames.

Weights and measures.

THE particular weights and measures of different sorts of goods, may be seen under their respective titles: and what is treated of here, is touching weights and measures in general.

I. Of the different kinds of weights and measures.
II. Standard of weights and measures to be kept in market towns.
III. Mayors and other officers to seal and regulate measures.
IV. Punishment of mayors and other officers for omitting their duty.

I. Of the different kinds of weights and measures.

Divers weights.

1. Notwithstanding the many statutes which have enacted, that there shall be but one weight and one measure, throughout the realm, there always have been, and still are two kinds of weights used in *England*, and both warrantable; the one by law, and the other by custom; but they are for several sorts of wares or commodities: for there is *troy* weight and *averdupois*. *Dalt. c.* 112.

Troy weight.

2. *Troy* weight is by law; and thereby are weighed silk, gold, silver, pearl, and precious stones. And this hath to the pound 12 ounces. *Dalt. c.* 112.

Averdupois weight.

3. *Averdupois* (which in *French* is as much as to say to have full weight) is by custom, yet confirmed by statute; and thereby are weighed all kind of grocery wares, drugs, butter, cheese, flesh, wax, pitch, tar, tallow, wool, hemp, flax, iron, steel, lead, and all other commodities which bear the name of garble, and whereof issueth a refuse or waste; (and also bread, by the 31 *G.* 2. *c.* 29.) And this hath to the pound 16 ounces; and 12 pounds over are allowed to every hundred. *Dalt. c.* 112.

4. And

4. And no less do the measures also differ in different places. Thus Mr. *Dalton* observes, that the bushel of corn in one place is greater than in another; and it seems, he says, that the custom of the place is to be observed: Yet he makes a *quæry* upon it, because it is contrary to the great charter, and divers other statutes; and custom or prescription against a statute seemeth not good. *Dalt. c.* 112. Divers measures.

II. Standard of weights and measures to be kept in market towns.

In every city, borough, and market town, a common balance shall be, with common weights sealed, and according to the standard of the exchequer, upon the common costs of such city, borough, or market town, in the keeping of the mayor, or constable; on pain of 10 *l.* for such city making default, borough 5 *l.* and market town 40 *s.* Standard to be kept in market towns, at which all may weigh.

At which balance all the inhabitants may freely weigh without any thing paying; taking nevertheless of foreigners, for every draught within the weight of 40 *lb.* a farthing, and for every draught betwixt 40 *lb.* and 100 *lb* an halfpenny, and for every draught betwixt 100 *lb.* and 1000 *lb.* a penny.

And justices of the peace, mayors, bailiffs, and stewards of franchises may inquire of offenders against this ordinance, and do execution of them that be found faulty. 8 *H.* 6. *c.* 5. 11 *H.* 7. *c.* 4.

III. Mayors and other officers to seal and regulate measures.

1. The clerk of the market, and where there is none, the mayor, or head officer, or other person having benefit of the market, shall cause to be sealed all measures duly gauged, by the standard which he shall have out of the exchequer. 22 & 23 *C.* 2. *c.* 12. *s.* 4. Measures to be sealed.

2. For which he shall be paid, 1 *d.* for the sealing and marking of a bushel, an halfpenny for a peck or half peck, and a farthing for a gallon, pottle, quart, pint, or half pint. 22 *C.* 2. *c.* 8. *s.* 4. Fee for the same.

3. And whosoever shall sell by any other weight, measure, or yard, not according to the standard, or keep any such whereby any thing is bought or sold, shall forfeit 5 *s.* on conviction before one justice, or mayor, on oath of one witness; to be levied by the churchwardens and overseers, or some of them, to the use of the poor, by distress. Penalty of using any other.

In

In default of diſtreſs, impriſonment till paid. 16 *C. c.* 19. *ſ.* 2.

But water meaſure (*viz.* 5 pecks to the buſhel, *Dalt c.* 112.) in ſea port towns ſhall continue as uſual. *id. ſ.* 7. Except in the meaſuring of corn and ſalt. 22 *C.* 2. *c.* 8. *ſ.* 2.

Weights to be examined.

4. And the mayors, and other head officers in market towns, ſhall twice a year or oftner cauſe all weights and meaſures within the ſame, to be brought before them, and examined; and ſuch as they find defective, to be broken and burnt; and the offender ſhall forfeit to the mayor or other officer, for the firſt time, 6 *s.* 8 *d.* for the ſecond time, 13 *s.* 4 *d.* and the third time, 20 *s.* and be ſet on the pillory: And two juſtices (1 *Q.*) may hear and determine theſe offences, as well by examination as by inquiry, and ſet fines and amerciaments, and make proceſs thereupon, as if they were indicted before them for breaking of the king's peace. 11 *H.* 7. *c.* 4.

Conſtables to ſearch.

5. Alſo, the conſtable ſhall ſearch, if any perſons uſe any other meaſure than according to the ſtandard; or ſhall ſtrike in any other manner, than even by the wood or brim; or ſhall ſell or buy by a meaſure unſealed; and if he find any unſealed meaſure, he ſhall break the ſame, and ſhall preſent the offenders at the next private or quarterly ſeſſions. 22 *C.* 2. *c.* 8. *ſ.* 6.

IV. Puniſhment of mayors and other officers for omitting their duty.

Penalty of refuſing to ſeal.

1. If any mayor, lord of the liberty, or other perſon authorized to mark or ſeal meaſures, ſhall neglect or refuſe, being required, to ſeal or mark any buſhel, half buſhel, or peck duly gauged; he ſhall forfeit for the firſt offence 5 *l.* and for every other offence 10 *l.* on conviction by preſentment or indictment at the county ſeſſions; half to the proſecutor, and half to the poor; to be levied by diſtreſs; and for default of diſtreſs, to be impriſoned by warrant of the ſaid juſtices till payment be made. 22 *C.* 2. *c.* 8. *ſ.* 3, 4.

Penalty on taking more than is due for ſealing.

2. Or if he ſhall take more than one penny for the ſealing and marking of a buſhel, or more than a halfpenny for a half buſhel or peck, or more than a farthing for a gallon, pottle, quart, pint, or half pint; he ſhall forfeit 5 *s.* to the poor, on conviction before one juſtice, by the oath of one witneſs; to be levied by the churchwardens or overſeers, by diſtreſs; in default of diſtreſs, impriſonment till paid. 22 *C.* 2. *c.* 8. *ſ.* 4.

3. And

3. And if any mayor or other head officer, shall suffer any other measure to be used than according to the standard, and sealed; he shall forfeit 5 *l.* half to the prosecutor, and half to the poor, on conviction by presentment or indictment at the county sessions, by distress: for default of distress, to be imprisoned by warrant of the justices till paid. 22 *C.* 2. *c.* 8. *s.* 3. Penalty of suffering other measures.

4. And generally, by the 16 *C. c.* 19. *s* 5. If any mayor or other officer, or any lords of liberties or their agents, shall receive any fines or fees, other than are allowed by statute or custom; or shall take any fee for the marking, signing, or examination of any weights or measures, which have been formerly marked or sealed; or shall impose any fine without a due and legal trial of the offence; or shall otherwise misdemean himself in the execution of his office; he shall forfeit to the poor for the first offence 5 *l.* for the second 10 *l.* and for the third and every other offence 20 *l.* on conviction before one justice, on the oath of one witness: to be levied by the churchwardens or overseers by distress: for want of distress, imprisonment till paid. 16 *C. c.* 19. *s.* 5. General penalty for neglect of duty.

But after all, notwithstanding the punishments aforesaid, apppointed by statute, for selling by false weights and measures; yet the same is also an offence at the common law, and consequently may be punished by indictment, fine, and imprisonment.

Wife.

1. IN the case of *King* and his wife against *Jones T.* 2. *G.* 2. The plaintiff *Jones* declared against *Judith Parnell*, upon several promises. She by the name of *Judith King* appears by attorney, and pleads *non assumpsit*. And after a verdict for the plaintiff, she and *Edward King* bring a writ of error, and assign for error, that she has appeared and pleaded as a feme sole, whereas at the time of her appearance and plea she was married to the said *Edward King*. But by the court, This is to abate the plaintiff's writ by the act of the defendant, which was never allowed; we must take it, that at the time of bringing the action the defendant was a feme sole, because they pretend to carry it back no farther than the appearance. And plaintiffs would be in a fine condition, if after they have arrested a woman, she shall Woman marrying pending an action.

be allowed to overthrow their proceedings by a ſubſequent marriage. And the judgment was affirmed. *Str.* 811.

Committing offences with her huſband.

2. A wife, or feme covert, is ſo much favoured in reſpect of that power and authority which her huſband has over her, that ſhe ſhall not ſuffer any puniſhment for committing a bare theft, in company with, or by coercion of her huſband. 1 *Haw.* 2.

But if ſhe commit a theft of her own voluntary act, or by the bare command of her huſband; or be guilty of treaſon, murder, or robbery, in company with, or by coercion of her huſband, ſhe is puniſhable as much as if ſhe were ſole, becauſe of the odiouſneſs and dangerous conſequence of theſe crimes. 1. *Haw.* 2. 1 *H. H.* 47. *Dalt. c.* 157.

And the coercion of the huſband is only a preſumption till the contrary appear; for if upon the evidence it can clearly appear, that the wife was not drawn to it by the huſband, but that ſhe was the principal actor and inciter of it, ſhe ſeems to be guilty as well as the huſband. 1 *H. H.* 516.

Acceſſary in receiving her huſband.

3. A wife ſhall not be deemed acceſſary to a felony for receiving her huſband who has been guilty of it; as her huſband ſhall be for receiving her: becauſe ſhe is under the power of her huſband, and ſhe is bound to receive him. 1. *Haw.* 2. 1 *H. H.* 47.

Keeping a bawdy houſe.

4. But a wife may be indicted together with her huſband, and condemned to the pillory with him for keeping a bawdy houſe; for this is an offence as to the government of the houſe, in which the wife has a principal ſhare; and alſo ſuch an offence as may generally be preſumed to be managed by the intrigues of her ſex. 1 *Haw.* 2.

Wife to ſuffer corporally; but the huſband to pay the forfeiture.

5. And generally, a married woman ſhall anſwer as much as if ſhe were ſole, for any offence not capital, againſt the common law or ſtatute; and if it be of ſuch a nature that it may be committed by her alone, without the concurrence of her huſband, ſhe may be puniſhed for it without the huſband, by way of indictment; which being a proceeding grounded merely on the breach of the law, the huſband ſhall not be included in it for an offence to which he is no way privy. But if a wife incur the forfeiture of a penal ſtatute, the huſband may be made a party to an action or information for the ſame (as he may generally to any ſuit for a cauſe of action given by his wife), and ſhall be liable to anſwer what ſhall be recovered thereupon. 1 *Haw.* 3.

Eloping.

6. If a wife willingly leave her huſband, and go away, and continue with her advouterer, ſhe ſhall be barred for ever of action to demand her dower. 13 *Ed.* 1. *ſt.* 1. *c.* 34.

M. 12

M. 12 *G. Morris* and *Martin.* Action for meat and other things provided for the defendant's wife. The defendant proved she went away from him with an adulterer. *Raymond* Ch. J. held, that the husband should not be charged for necessaries for her, tho' the plaintiff who provided for her had no notice; and he said Ch. J. *Holt* always ruled it so. *Str.* 647.

T. 12. *G. Mainwaring* and *Sands.* In an action against the husband for a laced head sold to the wife, it was proved, that the wife lived from her husband in adultery, and that she told the plaintiff she had a husband, but that signified nothing, for she would pay him herself. *Raymond* Ch. J. held the defendant not chargeable, and said he should have ruled it so, if there had been no actual notice, which only strengthened the case. *Str.* 706.

T. 4 *G.* 2. *Child* and *Hardyman.* Action for linen sold to the defendant's wife. Upon *non assumpsit*, the delivery was proved. And the defendant proved that she had lived in a very lewd manner; one Mr. *Nott* frequently coming to her at her husband's house, and they were locked up together in a bed-chamber; and other indecencies passed between them. And it was also proved, that she several times went to the house of this *Nott*, a gentleman in *Wiltshire*, who lived within three miles of the defendant's house. It did not appear farther, than that he disliked her going and staying at Mr. *Nott*'s. But under these circumstances, the husband and wife continued to live together. Afterwards, she went away from him, and went to *Marlborough*, where she resided for some time; but after the leaving her husband's house, it did not appear that she ever saw Mr. *Nott*, or lived in a lewd manner. After some time, she sent *Lucas* an attorney to her husband, to desire that he would receive her again; the husband told him, that if she came again, she should never sit at the upper end of his table, nor have the government of the children, but should live in a garret. Then *Lucas* proposed to him, to make her an allowance, and proposed about 80 or 100 *l.* a year, he being worth about 5 or 600 *l.* a year. But that was not complied with; and afterwards she came to *London*, and bought the linen, to the amount of 53 *l.* By *Raymond* Ch. J. If a woman elopes from her husband, though she does not go away with an adulterer, or in an adulterous manner; the tradesman trusts her at his peril, and the husband is not bound. And this hath been so adjudged in two or three cases. Indeed if he refuse to receive her again, from that time it may be an answer to the elopement. In this case he doth not absolutely

refuse

refuſe to receive her again; but that ſhe ſhould neither ſit at his table, nor have any government of the children, but ſhould be kept in a garret; and ſhe deſerved no better uſage. And the plaintiff was nonſuit. *Str.* 875.

M. 18. *G.* 2. *Bolton* and *Prentice.* In *aſſumpſit* for goods ſold and delivered to the defendant's wife, the caſe appeared to be, that the defendant and his wife had formerly lodged at the plaintiff's houſe, and the plaintiff furniſhed her with goods; and the defendant finding the plaintiff had helped her to pawn her watch, and ſuſpecting he confederated with her, left the lodgings, after paying the plaintiff his bill, and forbidding him ever truſting her again. After this the defendant and his wife cohabited together for a year; when, without any cauſe appearing, he left her, locked up her cloaths, and upon her finding him out, refuſed to admit her, and ſtruck her, and declared he would not maintain her, or pay any body that did. In this diſtreſs, ſhe borrowed cloaths of her friends, and applied to the plaintiff, who furniſhed her with neceſſaries according to the defendant's degree; which the defendant refuſing to pay for, this action was brought; and upon trial the jury found for the plaintiff. Upon motion for a new trial, the court held the verdict was right; for whilſt they were at the plaintiff's, there was a particular reaſon for the particular prohibition; yet the cauſeleſs turning her away deſtitute afterwards, gave her the general credit again: and if a huſband ſhould be allowed, under the notion of a particular prohibition, to deſtroy her obtaining credit in one place, he may in the ſame manner prevent it with all people ſhe is acquainted with. He appears to be a wrong doer, and therefore has no right to prohibit any body. They diſtinguiſhed this caſe from the caſe of *Manby* and *Scot*, 1 *Sid.* 109. for there the wife was guilty of the firſt wrong in eloping. *Str.* 1214.

Carrying her away with the huſband's goods.

7. Of women carried away (*viz.* violently, or againſt their wills, 2 *Inſt.* 435.) with the goods of their huſbands, the king ſhall have the ſuit for the goods ſo taken away, 13 *Ed.* 1. *ſt.* 1. *c.* 34. That is, it ſhall be felony. And ſo, if any man takes another man's wife, with her huſband's goods, againſt the huſband's will, this is alſo felony. *Dalt. c.* 157.

Wife taking the huſband's goods.

8. But a wife herſelf cannot felonioufly take her huſband's goods; and tho' ſhe ſo takes her huſband's goods; and delivers them to a ſtranger, yet it is no felony in the ſtranger. *H. Pl.* 65. 1 *Haw.* 93.

Guilty of forcible entry.

9. A married woman, by her own act (but not in reſpect of what is done by others at her command, becauſe all ſuch com-

commands of hers are void) may commit a forcible entry or detainer; and upon the justice's view of the force, she shall be imprisoned therefore, and she may be fined in such case: but such fine set upon the wife, shall not be levied upon the husband; for the husband shall never be charged for the act or default of his wife, but when he is made a party to the action, and judgment given against him and his wife. *Dalt. c.* 126. 9 *Co.* 72. 11 *Co.* 61.

10. Likewise if she shall commit any riot, or do any trespass or other wrong, she is punishable for it; and for a trespass done by the wife, or for a scandal published by her, the action lieth against both the husband and wife, and there the husband is chargeable to the damages or fine, because he is party to the action and judgment; but if a wife without her husband be indicted of a trespass, riot, or any other wrong, there the wife shall answer, and be party to the judgment only; and in such case, the fine set upon the wife shall not be levied upon the husband; yet after the husband's death, such damages or fine shall then be levied of the wife herself; and as for imprisonment, or other corporal pain, it shall be inflicted upon the wife only, and not upon the husband for his wife's act or default. *Dalt. c.* 139. Guilty of slander, trespass, or assault.

M. 19 *G.* 2. *Finch* and his wife against *Duddin* and his wife. In an action for a battery of the plaintiff's wife by the defendant's wife, there was judgment for the plaintiffs, and the wife of the defendant was only taken in execution. She moved to be discharged, but upon affidavits of endeavours to take the husband, and it not appearing there was any design to screen him, the court refused it, on the authority of *Pitt* and *Meller*. *Str.* 1237.

Which case of *Pitt* and *Meller*, *T.* 15 *G.* 2. was thus: In trover against both, and judgment and execution against both; the wife petitioned to be discharged out of custody; which the court refused, unless it could be shewn, that there was fraud and collusion between the plaintiff and the husband, to keep her there. *Str.* 1167.

M. 10 *G. Tarrant* and *Mawr.* The wife libelled in the spiritual court for calling her whore, and there being proceedings likewise for defamation against *her* by the other, the two husbands enter into an agreement to stay proceedings on both sides: and upon one of the wives going on, the husband moved for a prohibition; but it was denied: for by the court, the suit is by the wife, to recover her fame, and it is not in the power of the husband to restrain her. *Str.* 576.

11. If

Receiving ſtolen goods.

11. If a woman receive ſtolen goods into her houſe, knowing them ſo to be; or ſhall lock them up in her cheſt or chamber, her huſband not knowing thereof; if her huſband, ſo ſoon as he knoweth thereof, do forthwith forſake his houſe, and her company, and make his abode elſewhere, he ſhall not be charged for her offence; whereas otherwiſe, the law will impute the fault to him, and not to her. *Dalt. c.* 157.

Guilty of conſpiracy with her huſband.

12. A proſecution for conſpiracy is not maintainable againſt a huſband and wife only; becauſe they are eſteemed but as one perſon in law, and are preſumed to have but one will. 1 *Haw.* 192.

Woman ſervant marrying.

13. If a woman who is a ſervant ſhall marry, yet ſhe muſt ſerve out her time, and the huſband cannot take her out of her maſter's ſervice. *Dalt. c.* 58.

Wife hiring to be a ſervant.

14. Alſo if a married man and his wife do bind themſelves to ſerve, they ſhall be compelled to ſerve, according to their covenant or agreement. *Dalt. c.* 58.

Killing her huſband, petty treaſon.

15. If the wife maliciouſly kill her huſband, it is petty treaſon; but if the huſband maliciouſly kill his wife, it is but murder. *Dalt. c.* 142.

Evidence for or againſt her huſband.

16. Huſband and wife cannot be witneſſes for one another; nor regularly againſt one another. 2 *Haw.* 431.

May demand ſurety of the peace againſt her huſband.

17. But a wife may demand ſurety of the peace againſt her huſband threatning to beat her outrageouſly, and a huſband alſo may have it againſt his wife. 1 *Haw.* 127.

And in other criminal caſes, the wife may be a witneſs againſt her huſband, where ſhe is the party grieved; but not in civil caſes. *Dalt. c.* 164.

T. 31 *G.* 2 *Rex v. Earl Ferrers.* An *habeas corpus* was iſſued, commanding *Lawrence* Earl *Ferrers*, to bring up the body of his counteſs; that ſhe might receive the protection of the court againſt the ſaid earl, and ſwear the peace againſt him if ſhe ſhould think proper. The earl diſobeying the writ of *habeas corpus*, an attachment was granted againſt him. Upon which he permitted her to come into court, and ſhe exhibited articles of the peace againſt him. And the earl was obliged to enter into recognizance accordingly, himſelf in 5000 *l.* and two ſureties in 2500 *l.* each. *Burrow.* 631.

Huſband and wife agreeing to live ſeparate.

18. *E.* 31 *G.* 2. *Rex v. Mary Mead.* An *habeas corpus* having iſſued, at the inſtance of *John Wilkes*, eſquire, to bring up the body of *Mary Wilkes*, wife of the ſaid *John Wilkes*, and daughter of the ſaid *Mary Mead*; Mrs. *Mead* now brought her into court. The ſubſtance of the return was, that her huſband (having uſed her very ill) did, in con-

consideration of a great sum which she gave him out of her separate estate, consent to her living alone, executed articles of separation, and covenanted (under a large penalty) never to disturb her or any person with whom she should live; that she lived with her mother, at her own earnest desire; and that the writ of *habeas corpus* was taken out with a view of seizing her by force, or some other bad purpose. The court held this to be a formal renunciation by the husband, of his marital right to seize her or force her back to live with him. And they said, that any attempt of the husband to seize her by force and violence, would be a breach of the peace. They also declared, that any attempt made by the husband to molest her in her present return from *Westminster-hall*, would be a contempt of the court. And they told the lady, she was at full liberty to go where, and to whom, she pleased. *Burrow.* 542.

Cannot be bound by recognizance.

19. A wife cannot be bound herself by recognizance, but her sureties only. *Dalt. c.* 117.

May make a surrender.

20. She may surrender a lease in the court of chancery or exchequer, in order to renew the same. 29 *G.* 2. *c.* 31.

Husbands not liable to the wife's debts after her death.

21. *H.* 1735. In the chancery. *Heard* and *Stamford.* The husband, as such, is not chargeable in a court of equity, any more than at law, with the debts of his wife after her decease; no not even tho' he had a large fortune with her: as, on the other hand he is, during the coverture, liable to all her debts, altho' he got nothing with her. *Cas. Talb.* 173. 3 *Peere Will.* 409.

Windows.

I. First meeting of the commissioners, for the issuing precepts to return assessors.

II. Second meeting; charge to the assessors, with the manner of laying the assessment.

III. Third meeting; signing the assessment, with warrant to collect.

IV. Fourth meeting; the appeal.

V. Collecting.

VI. Collector paying to the receiver.

VII. Receiver paying into the exchequer.

VIII. Duplicates to be tranſmitted into the exchequer.
IX. General penalty on officers not doing their duty.
X. Indemnity of officers in doing their duty.

I. Firſt meeting of the commiſſioners, for the iſſuing precepts to return aſſeſſors.

Commiſſioners of theſe duties.

1. COmmiſſioners of the land tax ſhall be commiſſioners for the duties on houſes and windows. 20 *G.* 2. *c.* 3. *ſ.* 6.

But no commiſſioner of the land tax ſhall act as commiſſioner of theſe duties, unleſs duly qualified, (that is, unleſs he be taxed at 100 *l.* a year in the county or diviſion, except certain counties in *Wales*, as by the land tax acts) on pain of 20 *l.* to be levied as other penalties by this act. 21 *G.* 2. *c.* 10. *ſ.* 3.

But they ſhall not be obliged to take the oaths, and ſubſcribe the declaration, and receive the ſacrament, as directed by the 25 *C.* 2. *c.* 2. as other perſons qualifying for offices; but only to take the oaths of allegiance, ſupremacy, and abjuration, as by the land tax acts. 20 *G.* 2. *c.* 3. *ſ.* 27.

Time and place of meeting.

2. Which ſaid commiſſioners ſhall meet yearly, at the moſt uſual place of meeting, at ſuch time as ſhall be appointed for the firſt general meeting of the commiſſioners of the land tax, or on ſuch other day as they ſhall think proper, before *April* 30. yearly. 20 *G.* 2. *c.* 3. *ſ.* 6.

Subdividing.

3. And at ſuch firſt meeting, they may agree to ſubdivide themſelves, and the other commiſſioners not then preſent, in ſuch manner as to them ſhall ſeem meet. *id. ſ.* 6.

Precept to return aſſeſſors.

4. Alſo, at ſuch firſt meeting, they or the major part of them then preſent, ſhall direct their ſeveral or joint precepts (A) to ſuch inhabitants, and ſuch number of them as they ſhall think moſt convenient, to be preſentors and aſſeſſors, requiring them to appear before the ſaid commiſſioners, at ſuch time and place as they ſhall appoint, not exceeding ten days. 20 *G.* 2. *c.* 3. *ſ.* 6.

Aſſeſſors in towns corporate.

5. But no perſon in a city, borough, or town corporate, ſhall be compelled to be an aſſeſſor or collector out of the limits thereof. 20 *G.* 2. *c.* 3. *ſ.* 18.

Collectors to return their laſt collection bills.

6. And the laſt collectors ſhall cauſe a copy of the aſſeſſments given to them, and of the collection made by them, to be fairly written and ſigned by them, but with ſuch alterations therein as ſhall be neceſſary, by reaſon of any new houſes erected, or the number of windows in any houſe increaſed,

creaſed, or by reaſon of the change of inhabitants or occupiers of any houſe, or otherwiſe, or a true duplicate thereof, ſigned as aforeſaid, to be delivered to three or more commiſſioners yearly, within ten days after their firſt meeting. 20 *G.* 2. *c.* 3. *ſ.* 8.

So that it may be moſt proper to direct the precept for the laſt collectors to be aſſeſſors.

7. And every aſſeſſor, before he acts, ſhall take the oaths required by the 1 *W.* *c.* 18. before three commiſſioners. 20 *G.* 2. *c.* 3. *ſ.* 6. Aſſeſſors to take the oaths.

Which oaths are the oaths of allegiance and ſupremacy.

But quakers, inſtead of ſuch oaths, ſhall be allowed to make and ſubſcribe the declaration of fidelity, preſcribed by the ſaid act of the 1 *W.* *c.* 18. 20 *G.* 2 *c.* 42. *ſ.* 4.

8. Aſſeſſors refuſing to take the oaths, or their offices, ſhall forfeit 5 *l.* 20 *G.* 2. *c.* 42. *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3. Aſſeſſors refuſing

II. Second meeting; charge to the aſſeſſors, with the manner of laying the aſſeſſment.

1. The commiſſioners ſhall openly read, or cauſe to be read to the aſſeſſors, the ſeveral rates and duties, and openly declare the effect of their charge unto them, and how they ought to make their aſſeſſments. 20 *G.* 2. *c.* 3. *ſ.* 6. Charge to the aſſeſſors.

2. That is to ſay, For every dwelling houſe inhabited, ſhall be paid yearly 3 *s.* 20 *G.* 2. *c.* 3. *ſ.* 2. 31 *G.* 2. *c.* 22. *ſ.* 31. Duty on houſes.

3. And for every window or light in every dwelling houſe, containing 8, 9, 10, or 11 windows or lights, ſhall be paid moreover the yearly ſum of 1 *s.* each. And for every window or light in every dwelling houſe as aforeſaid, containing 12 windows or lights, and upwards, the yearly ſum of 1 *s.* 6 *d.* each. 20 *G.* 2. *c.* 3. *ſ.* 3. 31 *G.* 2. *c.* 22. *ſ.* 31. 2 *G.* 3. *c* 8. *ſ.* 1. Duty on windows.

4. And every kitchen, ſcullery, buttery, pantry, larder, waſhhouſe, laundry, bakehouſe, brewhouſe, and lodging room, belonging to or occupied with any dwelling houſe, whether joined to it or not, ſhall be deemed part thereof, and the windows therein charged accordingly. 21 *G.* 2. *c.* 10. *ſ.* 1. Unto what windows the ſame ſhall extend.

Alſo ſky lights, and windows or light in ſtaircaſes, garrets, cellars, paſſages, and in all other parts of dwelling houſes, to what uſe ſoever applied, ſhall be charged. *ſ.* 2.

Several windows in one frame.

5. And where several windows are fixed in one frame, if the partition or division between them is of the breadth of 12 inches, the windows on each side of the partition shall be deemed a distinct window. 20 *G.* 2. *c.* 3. *f.* 38.

Window inlightning two rooms.

6. And all windows in frames which shall give light into more rooms than one, shall be charged as so many separate windows, as there are rooms inlightened thereby. 20. *G.* 2. *c.* 3. *f.* 38.

Windows stopped up.

7. And no windows or lights shall be deemed to be stopped up, unless it be done effectually with stone or brick, or plaster upon lath, or upon any other material commonly used to plaster upon, or with the same kind of materials whereof the outside of the house doth chiefly consist. 21 *G.* 2. *c.* 10. *f.* 11.

But this not to extend to windows stopped up with any materials, before the year 1746. *f.* 12.

And if any occupier shall open any windows, after the assessments are settled, and warrants for collecting signed, without notice in writing to the surveyor, he shall forfeit 20 *s.* 20 *G.* 2. *c.* 3. *f.* 39. by distress and sale, *f.* 28. half of which fine shall go to the informer. 21 *G.* 2. *c.* 10. *f.* 15.

Two families in one house.

8. Where a house shall be inhabited by two or more persons or families, it shall pay as if it was inhabited by one person or family only. 20 *G.* 2. *c.* 3. *f.* 31.

House let in different apartments.

9. Where any dwelling house is let in different apartments to several persons, and the landlord of such house pays other taxes and parish rates for the same; such landlord shall be deemed the occupier of such dwelling house, and be charged with the duties for the same, as an entire house. 20 *G.* 2. *c.* 3. *f.* 35.

Rates to be charged on the inhabitants.

10. And the rates shall be charged only upon the inhabitants or occupiers, and not on the landlord who let or demised the same. 20 *G.* 2. *c.* 3. *f.* 5.

Infants how chargeable.

11. Parents and guardians of infants, on default of payment by such infants, shall be liable; and may be proceeded against as other persons making default. *id. f.* 15.

Colleges.

12. Each distinct chamber in a college or hall in the universities, shall pay as if it were an entire house paying to church and poor *id. f.* 32.

Inns of court.

13. Every edifice in the inns of court or chancery, being severally in the occupation of any person, shall pay for every window or light; but shall not pay the 3 *s.* duty on houses. 20 *G.* 2. *c.* 3. *f.* 33. 21 *G.* 2. *c.* 10. *f.* 18, 19.

Cottages.

14. Such dwelling houses only, where the occupier, by reason of poverty only, is exempted from the usual taxes to church

church and poor, shall be exempted from the duties; and that only in such cases where the dwelling houses so occupied are cottages, not containing above nine windows in the whole. 20 *G.* 2. *c.* 3. *f.* 29.

15. But every house whereof the keeping only is committed or left to a person or servant who pays not to church and poor, shall pay as if inhabited by the occupier or tenant. *id. f* 33. Houses left to servants.

16. And if any person shall wilfully obstruct or molest any assessor in the execution of his duty, he shall forfeit 5 *l.* to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *f.* 14. Obstructing the assessors.

17. And the assessor shall assess themselves and the commissioners, as other persons are assessed. 21 *G.* 2. *c.* 10. *f.* 16. Assessors to assess themselves.

18. And the commissioners shall then and there prefix a day for the persons to appear before them, and bring in their assessments in writing under their hands; setting forth therein the names and surnames of the several occupiers or inhabitants of each respective dwelling house chargeable, the number of windows or lights, and the several sums they ought to pay. 20 *G.* 2. *c.* 3. *f.* 6. Day for bringing in the assessments.

Which day shall be on or before *June* 4. yearly. *f.* 7. (B)

III. Third meeting; signing the assessment, with warrant to collect.

1. The assessors appearing at the day appointed, shall deliver in their assessments, to be verified upon their oaths, and not otherwise. 20 *G.* 2. *c.* 3. *f.* 6. Assessment delivered in.

2. And shall then return the names of two or more able and sufficient persons to be collectors, for whom the parish or place shall be answerable. 20 *G.* 2. *c.* 3. *f.* 6. Returning the names of collectors.

3. At which time also three or more of the commissioners shall set their hands to the assessments, testifying their allowance thereof. 20 *G.* 2. *c.* 3. *f.* 9. Signing the assessment.

Note; It is not necessary by the words of the act that the same shall be sealed.

4. And they shall also appoint two of the persons named in the assessment, or any two others whom they shall think able and responsible, to be collectors. *id.* (C) Appointing collectors.

5. Also on delivery and return of the assessments, three or more commissioners shall, at least ten days before the rates shall become due, issue their warrants or estreats under their hands and seals, to the collectors, for the speedy col- Warrant to collect.

lecting and levying the ſame, as they ſhall become due and payable. *id. ſ.* 7.

And they ſhall forthwith deliver the aſſeſſment ſo allowed of, to the collectors. *ſ.* 9.

Collector refuſing to act.

6. Collectors refuſing to take their offices, ſhall forfeit 5 *l.* 20 *G.* 2. *c.* 42 *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3.

Appointing the time for appeal.

7. Then three or more commiſſioners ſhall alſo give the collectors notice when and where the appeals of any perſons who ſhall think themſelves over rated, may be heard and determined. *id. ſ.* 12.

And all appeals which ſhall be made between *Mar.* 25. and *Aug.* 20. yearly, ſhall be heard and determined by the commiſſioners upon ſuch days as ſhall be by them appointed between *Aug.* 20 and *Sept.* 15. And all ſuch other appeals as ſhall be made between *Sept.* 29. and *Jan.* 20. yearly, ſhall be heard and determined upon ſuch other days as ſhall be appointed between *Jan.* 20. and *Feb.* 10. 21 *G.* 2. *c.* 10. *ſ.* 7.

Remedy where the commiſſioners have omitted their duty.

8 And where the commiſſioners ſhall have omitted to execute the powers to them given, within the time, and according to the manner above preſcribed, two or more of them may meet, and execute the ſame at any other times, as there ſhall be occaſion. 20 *G.* 2. *c.* 42. *ſ.* 1.

Surveyors to examine and ſurvey.

9. At this third meeting likewiſe comes on in the buſineſs of the ſurveyors, who ſhall be appointed by the king, or three commiſſioners of the treaſury: who ſhall appoint them ſuch ſalaries as they ſhall think reaſonable. 20 *G.* 2. *c.* 3. *ſ* 30, 42, 43.

And they ſhall have power to examine the aſſeſſments, before they are ſigned and allowed by the commiſſioners; and at ſeaſonable times, with a conſtable, to view and examine whether there be any more windows than are aſſeſſed, and to paſs for that purpoſe thro' any houſe, to go into any court, yard, or backſide thereunto belonging, and externally to view the windows which cannot be conveniently ſeen or numbered without going thro' ſuch houſe: and this they may do twice a year. *id. ſ.* 30.

And the conſtables, and other his majeſty's officers, ſhall be aſſiſting; and ſhall alſo obey and execute the warrants of the commiſſioners to them directed. *id. ſ.* 22.

And if any perſon ſhall wilfully obſtruct or moleſt any ſurveyor in the execution of his duty, he ſhall forfeit 5 *l.* to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *ſ.* 14.

IV. Fourth

IV. Fourth meeting; the appeal.

1. Every collector shall, within ten days after notice from the commissioners of the time and place of appeal, cause public notice to be given in every parish church or chapel within his district, immediately after divine service, on the lord's day (if any such divine service shall be performed there within that time) of the time and place so appointed by the commissioners for hearing and determining appeals: And shall also on the same day, cause the like notices to be nxed in writing on the door of such church or chapel. 20 *G.* 2 *c.* 3. *f.* 12. Notice of the appeal day to be be given in the church.

2. And after the rates are signed and allowed by the commissioners, if the surveyor finds on his survey, that any houses or lights have been omitted, or are under rated, he shall certify the same in writing under his hand, by way of surcharge, on or before *Aug.* 10. and *Jan.* 10. yearly, to any three or more commissioners, in order to have such omission or under rate certified in the assessment. 20 *G.* 2. *c.* 3. *f.* 37. 21 *G.* 2. *c.* 10. *f.* 6. Surveyor to give in his surcharge.

And he shall also leave a written notice at the dwelling house of every occupier so surcharged, that he intends to charge them for such number of windows or lights as are charged in such certificate. 21 *G.* 2. *c.* 10. *f.* 6.

3. And every person intending to appeal shall give at least ten days notice thereof in writing to the surveyor, or to one or more of the assessors. 21 *G.* 2. *c.* 10. *f.* 8. Notice of appeal.

4. And no assessment shall be altered or diminished, except only on hearing the appeal, upon a general appeal day. 21 *G.* 2. *c.* 10. *f.* 5. Assessment not to be altered but on a general appeal day.

5. And the surveyor, assessors, and appellant may be present during the time of hearing and determining the appeal, unless they misbehave. 21 *G.* 2. *c.* 10. *f.* 8. Surveyor may be present.

6. And in case of any controversy arising between the commissioners concerning the assessments, the commissioners that shall be concerned therein shall have no voice, but shall withdraw during the debate, until it be determined by the rest of the commissioners. 20 *G.* 2. *c.* 3. *f.* 21. Commissioner interested to withdraw.

7. The surveyor appearing to make good his surcharge, shall make oath that a written notice was left at the dwelling houses of the several occupiers so surcharged, that he intended so to surcharge them. 21. *G.* 2. *c.* 10. *f.* 6. Surveyor to make oath that he gave notice.

8. At the appeal, the commissioners shall examine the parties complaining, upon oath, concerning their number of windows or lights. 20 *G.* 2. *c.* 3. *f.* 12. The parties to be examined on oath.

And they shall not make any abatement of the charge or surcharge, unless it doth appear upon oath, that such person is over-rated. 21 *G.* 2. *c.* 10. *s.* 8.

How far the appeal determined shall be final.

9. Appeals determined shall be final: Except that if the surveyor or appellant shall then declare himself dissatisfied with the determination of the commissioners, they shall, at such person's request, state specially and sign the case upon which the question arose, together with their determination thereupon, and cause the same to be delivered to the party, to be by him transmitted to one of the judges; who shall with all convenient speed return an answer, with his opinion subscribed; according to which the assessment shall be altered or confirmed; provided that the determination of the commissioners shall stand, with respect to the payments which shall be due precedent to the opinion upon the case certified by the judge. 21 *G.* 2. *c.* 10. *s.* 9, 10.

V. Collecting.

Collector to make demand.

1. The collectors shall make demand of the parties chargeable, or at the places of their last abode, within ten days after the duties shall become due and payable. 20 *G.* 2. *c.* 3. *s.* 7.

And give receipts.

2. And on payment thereof, they shall give acquittances *gratis*; which shall be a full discharge to the person paying the same. *id.*

May distrain.

3. And if any person shall refuse to pay to the collector on demand, he may distrain such person by his goods; and shall keep the distress four days at the owner's cost; and if not paid in the said four days, then the distress shall be appraised by two inhabitants; and then sold by the officer; the overplus (if any) over and above the charges of taking and keeping the distress, to be immediately restored to the owner. *id. s.* 11.

And where any refusal, neglect, or resistance shall be made, it shall be lawful by warrant of three commissioners to break open any house in the day time, calling in the constable to assist. *id.*

Commitment for want of distress.

4. And if sufficient distress cannot be found, three commissioners by their warrant may commit any person who shall refuse or neglect to pay for 20 days after demand, to the common goal, until payment shall be made. 20 *G.* 2. *c.* 3. *s.* 11.

Levying arrears.

5. Arrears may be levied by the commissioners in the same manner as the rates and duties. 21 *G.* 2. *c.* 10. *s.* 17.

6. Where

6. Where the occupier removes without paying the rates, the commiſſioners are to tranſmit a certificate thereof, to the commiſſioners where the perſon reſides; who ſhall cauſe the ſame to be levied and paid to the collectors of the place from whence the perſon did remove. 20 *G.* 2. *c.* 3. *ſ.* 41. Occupier removing.

VI. Collector paying to the receiver.

1. The collectors ſhall pay in the money received, within ten days after receipt thereof, to the receiver general or his deputy, at ſuch place as the commiſſioners ſhall appoint. 20 *G.* 2. *c.* 3. *ſ.* 7. Collector to pay to the receiver.

Provided that the collectors ſhall not be obliged to travel above ten miles from their habitations, to pay the money collected. *ſ.* 24.

2. Which receiver general ſhall give acquittances *gratis*; which ſhall be a full diſcharge to the collectors. 20 *G.* 2. *c.* 3. *ſ.* 21. Receiver to give acquittances.

3. And the ſaid receiver general ſhall give notice of his appointment of a deputy (which appointment ſhall be under hand and ſeal) unto three or more commiſſioners, within 20 days after their firſt meeting, and within 20 days after the death or removal of any deputy. 20 *G.* 2. *c.* 3. *ſ.* 23. Deputy receiver.

4. Every collector ſhall have 3 *d.* in the pound, for what money he ſhall pay to the receiver general. *id. ſ.* 11. Collector to have 3 d. a pound.

5. And if the collector ſhall neglect or refuſe to pay the money by him received, at the time appointed, three or more commiſſioners may impriſon his perſon, and ſeize and ſecure his eſtate as well freehold as copyhold, and all other eſtate both real and perſonal to him belonging, or which ſhall come to his heirs, executors, or adminiſtrators: Which commiſſioners may appoint a time for a general meeting of the commiſſioners giving publick notice thereof ten days before; and the commiſſioners at ſuch general meeting may ſell ſuch eſtates, or any part of them, for payment. 20 *G.* 2. *c.* 3. *ſ.* 16. Collector failing.

And if there be any arrear, by reaſon of the failure of a collector for whom the pariſh or place is anſwerable, three commiſſioners may cauſe it to be re-aſſeſſed in ſuch pariſh or place. *id. ſ.* 34.

6. And the collectors ſhall deliver a ſchedule of arrears to the receiver general, to be by him returned into the exchequer, that proceſs againſt the defaulters may be iſſued from thence. 29 *G.* 2. *c.* 3. *ſ.* 21. Returning arrears into the exchequer.

The

The receiver general returning any perſons in arrear who have paid, ſhall forfeit double damages to the party, and double the ſum to the king. *ſ.* 25.

And no receiver ſhall return any perſon in arrear in his accounts, unleſs ſuch account be paſſed in the exchequer, within two years after the end of the year for which ſuch rate ſhall be payable, but the ſame ſhall be a debt on him and his ſecurities. *ſ.* 26.

VII. Receiver paying into the exchequer.

Times of paying into the exchequer.

1. The receiver general ſhall pay the ſum received into the exchequer, by four quarterly payments (*viz. June* 24. *Sept.* 29. *Dec.* 25. and *Mar.* 25.) or in 40 days after the reſpective quarterly pay days; on pain of 500 *l.* to him who ſhall ſue. 20 *G.* 2. *c.* 3. *ſ.* 10.

Receiver's allowance.

2. And he ſhall have an allowance of 2 *d.* in the pound, for the money he ſhall pay into the exchequer. *ſ.* 11.

VIII. Duplicates to be tranſmitted into the exchequer.

Tranſmitting the duplicates.

The commiſſioners ſhall cauſe true duplicates of the aſſeſſments to be made out, within three months at fartheſt after *Mar.* 25. yearly; the appeals being firſt heard and determined. Such duplicates to be made for the ſame hundreds, wards, pariſhes, or places, for which diſtinct duplicates are and have been uſually made out for the land-tax; and the names and ſurnames of the aſſeſſors and collectors reſpectively ſhall be inſerted therein. 20 *G.* 2. *c.* 3. *ſ.* 10.

One of which duplicates ſhall be delivered to the receiver general, and another tranſmitted into the office of the king's remembrancer in the exchequer; for which the proper officers ſhall give acquittances *gratis. id.*

All which being done, the commiſſioners clerks, for the careful writing and tranſcribing the aſſeſſments, warrants, eſtreats, and duplicates in due time, ſhall by warrant under the hands of three commiſſioners, receive 1 $\frac{1}{2}$ *d.* in the pound, to be paid by the receiver general. *ſ.* 11.

IX. General penalty on officers not doing their duty.

Penalty on the ſurveyor.

1. If any ſurveyor ſhall knowingly, thro' favour or malice, under-rate or over-rate, or omit to charge any perſon liable,

liable, or shall be guilty of any corrupt or illegal practice in the execution of his office; he shall forfeit 100 *l.* and his office. 20 *G.* 2. *c.* 3. *s.* 10.

2. Assessor guilty of concealment or favour in assessing, shall forfeit not exceeding 5 *l.* nor under 40 *s.* *id. s.* 6. On the assessor.

3. Collector gathering by a rate not signed and allowed by the commissioners; or receiving rates from persons not charged therewith; or collecting from any person more than he is charged, and not paying the whole sum collected; or fraudulently altering any rate after being signed by the commissioners, shall forfeit 20 *l.* *id. s.* 36. by distress. *s.* 28. On the collector.

In the case of *Q.* against *Buck* and *Hale*, *M.* 3 *An.* The defendants were indicted and found guilty of a misdemeanor, for that being assessors and collectors of the publick taxes of such a parish, they assessed some too high, and omitted others in their books, and yet levied the money on them, and put it in their own pockets. On their coming to receive judgment, it was moved, that no corporal punishment might be inflicted, because the crime was not of an infamous nature. But they were adjudged to the pillory in the county where the crime was committed; and that the marshal should carry them down, and a writ should go to the sheriff to assist him in the execution. 6 *Mod.* 306.

4. Generally; if any assessor, collector, or other person appointed by the commissioners, shall wilfully neglect or refuse to perform his duty, three commissioners may fine him not exceeding 20 *l.* nor under 5 *l.* to be levied by distress, and charged amongst the rates to the receiver general. *id s.* 21. On others.

5. And the penalties and forfeitures, for which no other way of levying is prescribed, shall be levied by warrant of three commissioners by distress, rendring the overplus, after deducting reasonable charges for distraining. *id. s.* 28. General method of levying the penalties.

X. Indemnity of officers in doing their duty.

Persons sued for any thing done in the execution hereof, may plead the general issue, and have treble costs. 20 *G.* 2. *c.* 3. *s.* 66. 21 *G.* 2. *c.* 10. *s.* 20. Treble costs.

A. Precept

A. Precept to the high conſtables to return aſſeſſors.

Weſtmorland. { To *Henry Holme*, gentleman, high conſtable of the Weſt Ward within the ſaid county.

WE *the commiſſioners of the duties upon houſes and windows for the ſaid county, whoſe names are hereunto ſet, and ſeals affixed, do hereby require you forthwith upon the receipt hereof, to iſſue out your warrants to all the petty conſtables within your ſaid ward, according to the form hereupon indorſed. Given under our hands and ſeals the —— day of —— in the —— year ——*

The form of the ſaid warrant to be indorſed.

Weſtmorland, Weſt Ward. { To the conſtable of ——

BY *virtue of a precept from the commiſſioners of the duties upon houſes and windows for the ſaid county to me directed, you are hereby required forthwith to give notice to the laſt collectors of the ſaid duties within your conſtablewick, that they and every of them do perſonally appear before the ſaid commiſſioners at —— on —— the —— day of —— at the hour of —— in the forenoon of the ſame day, in order to be appointed aſſeſſors of the ſaid duties, for this preſent year, and at the ſame time to receive their charge, how and in what manner to make their aſſeſſments, and otherwiſe how to proceed in the execution of their ſaid office. And be you then there to certify what you ſhall have done in the execution hereof. Given under my hand the —— day of —— in the year of our Lord ——*

Henry Holme, *high conſtable.*

B. Appointment of aſſeſſors, with their charge.

Weſtmorland. WE *the commiſſioners of the duties upon houſes and windows for the ſaid county, whoſe names are hereunto ſet and ſeals affixed, do hereby nominate and appoint —— to be aſſeſſors of the ſaid duties within the townſhip of —— in the county aforeſaid. And*

we

we do hereby require you the said assessors, to make your assessment for the same, according to the proportions of the last assessment for the said duties within your said townſhip; but with such alterations therein as ſhall be neceſſary by reaſon of any new houſes erected, or the number of windows in any houſe increaſed, or the removal and change of the inhabitants, or otherwiſe. And your ſaid aſſeſſment you are to make out in writing, ſetting forth therein the names of the ſeveral occupiers or inhabitants, the number of windows or lights, and the ſum which they ought to pay; and ſign the ſame; and deliver the ſame to us upon oath at —— in the county aforeſaid, on —— the —— day of —— in the forenoon of the ſame day. At which time and place you are alſo hereby required to return unto us the names of two or more able and ſufficient inhabitants within your ſaid townſhip, to be collectors of the ſaid aſſeſſment; and in the mean time to give notice unto them, that they do alſo then and there appear, to receive their appointment, nomination, and charge. Given under our hands and ſeals the —— day of —— in the year of our Lord ——

C. Appointment and charge of the collectors, with warrant to collect.

Weſtmorland. WE *the commiſſioners of the duties upon houſes and windows for the ſaid county, whoſe names are hereunto ſet and ſeals affixed, do hereby nominate and appoint —— to be collectors of the ſaid duties for the townſhip of —— in the ſaid county, for this preſent year, and do hereby impower them to demand, collect, and receive the ſame. And you the ſaid collectors are hereby required, within ten days after your receipt hereof, to cauſe publick notice to be given in the church or chapel immediately after divine ſervice on the Lord's day, and to cauſe the like notice in writing to be affixed on the door of ſuch church or chapel, that all appeals againſt the aſſeſſment for the ſaid duties will be heard and determined by the ſaid commiſſioners at —— on the —— day of ——. And if any perſon ſhall neglect or refuſe to pay the ſame unto you upon demand, you are hereby required forthwith to give notice unto us thereof, that ſuch further proceedings may be had therein, as to law doth appertain. And the ſame when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to ſay, —— deducting out of the laſt payment thereof* 3 d. *for every pound by you collected, for*

your

your trouble in collecting and giving receipts. Given under our hands and seals the —— day of —— in the year of our Lord ——.

Wine.

In vessels of what size to be imported.

1. NO wine (except of the growth of *Tuscany*, *Turkey*, or the *Levant*) shall be imported in flasks, bottles, or vessels, less than 25 gallons; on pain of forfeiting the same, or the value; half to the king, and half to him that shall seize or sue by the laws of excise, or in the courts at *Westminster*. 1 *G.* 2. *st.* 2. *c.* 17. *s.* 7, 8.

To be imported in English shipping.

2. No wine shall be brought forth of *France*, but in *English* shipping, on pain of forfeiture. 5 *El. c.* 5. *s.* 11.

And the justices in sessions may determine offences against this act, by indictment or information. *s.* 30.

Licence for retailing foreign wine.

3. By the 9 *An. c.* 23. a wine licence is directed to be upon a 4 *s.* stamp. And by the 30 *G.* 2. *c.* 19. a further duty is laid thereon, of 5 *l.* for persons not having either ale or brandy licence; of 4 *l.* for persons having an ale licence, and no brandy licence; and of 40 *s.* for persons having both ale and brandy licence.

And by the same statute of the 30 *G.* 2. *c.* 19. *s.* 2. after *July* 5, 1757. no person unless he be authorized and enabled in the manner herein after prescribed, shall sell or utter by retail, that is, by the pint, quart, pottle, or gallon, or by any other greater or less retail measure, or in bottles, in any less quantity than shall be equal to the measure of the cask or vessel in which the same shall have been or may lawfully be imported, any kind of wine or liquor called or reputed wine; on pain of 100 *l.* half to the king, and half to the informer, to be recovered as the penalties for offences against the stamp acts. (Provided that the said penalties may be mitigated by the commissioners of the said duties as they shall think fit: the reasonable costs and charges of the officers and informers in the prosecution being always allowed over and above the mitigation.) 32 *G.* 2. *c.* 19. *s.* 1.

And two or more commissioners of the duties on stamped paper or parchment, and no other persons, shall grant licences under their hands and seals, to such persons as they shall think fit, to sell wine by retail as aforesaid, for one year, from the date of such licences. *s.* 3.

Provided,

Provided, that if the former commiſſioners for wine licences ſhall have granted a licence to any perſon to ſell wine by retail for one year, or for any term not then expired, the perſon ſo licenſed ſhall be enabled to ſell wine by retail for the ſpace of one year from the date of ſuch licence, or until the expiration of the term for which the licence ſhall be granted. *ſ.* 4.

And every perſon who ſhall have ſuch licence ſhall, if he intends to continue, take out a freſh licence ten days at leaſt before the expiration of the former, and in the ſame manner renew the ſame from year to year, paying down the reſpective ſum due for ſuch licences. *ſ.* 5.

And on application for any perſon not reſiding within the bills of mortality, the commiſſioners ſhall cauſe the ſame to be delivered on payment of the duty. *ſ.* 6.

Provided, that nothing herein ſhall be prejudicial to the privileges of the two univerſities. *ſ.* 9.

Nor to the company of vintners in *London*, or to any other city or town corporate; but they may enjoy ſuch privileges as they have heretofore lawfully enjoyed. Provided, that no perſon who ſhall be admitted to the freedom of the ſaid company of vintners by redemption only, ſhall be exempted from taking ſuch licence; but only the freemen of the ſaid company who have been already admitted to their freedom, or who ſhall after the ſaid 5th day of *July* 1757 be admitted to their freedom in right of patrimony or apprenticeſhip, ſhall be entitled to ſuch exemption. *ſ.* 11.

Nor to extend to the mayor and burgeſſes of *St. Albans*, for appointing and licenſing by virtue of their charter three wine taverns for and towards the maintenance of the free ſchool there. *ſ.* 12.

And no perſon ſhall by virtue of one licence keep more than one place, houſe, ſhop, vault, cellar, warehouſe, or other place, for ſelling wine by retail: and every retailer of wine ſhall cauſe the word WINE to be expreſſed in legible characters, either on a ſign hung out, or in ſome viſible place in or near the door, in the front of his houſe, ſhop, vault, cellar, warehouſe, or other place made uſe of for the retailing of wine, to denote that ſuch retailer is a dealer in wine, and liable to take out a licence for the retailing thereof; and if any perſon ſhall ſell wine by retail, without fixing or hanging out ſuch token, he ſhall forfeit 10 *l.* to be recovered as the penalty for ſelling wine without licence, ſubject nevertheleſs to the like power of mitigation as above. Provided always, that nothing herein ſhall extend to the univerſities. 32 *G.* 2. *c.* 19. *ſ.* 3, 4.

4. And

Licence for retailing sweets or made wine.

4. And by the 31 *G.* 2. *c.* 31. the act of the 30 *G.* 2. *c.* 19. shall be extended to sweets: And no person, unless he be authorized by having taken out such licence as by the said act, shall sell or utter by any retail measure, or in bottles, in any quantity less than 25 gallons, any kind of liquor made in *Great Britain*, by infusion, fermentation, or otherwise, from foreign fruit or sugar, or from *British* fruit or sugar, or from fruit or sugar mixed with any other ingredients, commonly called *sweets* or *made wines*; or any kind of liquor made in *Great Britain*, and known by the name of *sweets* or *made wines*, of whatsoever materials, or in whatsoever manner the same may be made; on the like pain of 100 *l.* *f.* 7. (And there is no power of mitigating this penalty; which seemeth to have been an omission.)

Setting the prices of wines.

5. The lord chancellor, lord treasurer, lord president, lord privy-seal, and the two chief justices, or any three of them, shall yearly between *Nov.* 20. and *Dec.* 31. set the prices of foreign wines sold in gross; so that proclamation be made thereof in term time in the court of chancery, or in the town where they shall be sold; and if any person shall offend against the said assessment, he shall forfeit for every vessel 40 *s.* half to the king, and half to the mayor if in a town corporate; and if not, to him that shall sue, 28 *H.* 8. *c.* 14. *f.* 2, 3. 37 *H.* 8. *c.* 23. *f.* 2. 12 *C.* 2. *c.* 25. *f.* 13.

And the justices of the peace, and mayors, may hear and determine the defaults of such offenders, and punish them by imprisonment, or otherwise, by their discretions. 28 *H.* 8. *c.* 14. *f.* 4.

And by the 37 *H.* 8. *c.* 23. If any person shall refuse to sell at the prices limited, the mayor and recorder and two ancient aldermen in *London*, being no vintners; and the mayor, aldermen, and other head officers elsewhere, or any two of them, whereof the mayor or chief alderman to be one, may enter and sell the same to the owner's use. *f.* 3.

Adulterating wines.

No person selling wine shall mix wines together, nor with any other thing; on pain that the seller in gross shall forfeit 100 *l.* and the retailer 50 *l.* half to the king and half to him that shall sue in any court of record. 12 *C.* 2. *c.* 25. *f.* 11.

Wine measure.

7. By the 5. *An.* *c.* 27. 231 cubical inches shall be a wine gallon, 63 gallons a hogshead, 126 gallons a butt or pipe, and 252 gallons a ton. *f.* 17.

Wine. See Excise.

Witchcraft.

1. BY the 9 *G.* 2. *c.* 5. No profecution, ſuit, or proceeding, ſhall be commenced or carried on againſt any perſon for witchcraft, ſorcery, inchantment, or conjuration, or for charging another with any ſuch offence, in any court whatſoever. *ſ.* 3. Witchcraft abolished.

2. But if any perſon ſhall pretend to exerciſe or uſe any kind of witchcraft, ſorcery, inchantment, or conjuration; or undertake to tell fortunes; or pretend from his ſkill or knowledge in any occult or crafty ſcience, to diſcover where, or in what manner, any goods or chattels, ſuppoſed to have been ſtolen or loſt, may by found; every perſon ſo offending, being convicted on indictment or information, ſhall ſuffer impriſonment for a year without bail or mainprize, and once in every quarter of the ſaid year, in ſome market town of the proper county, upon the market day there, ſtand openly on the pillory for one hour, and alſo ſhall (if the court by which ſuch judgment ſhall be given ſhall think fit) be obliged to give ſureties for his good behaviour, in ſuch ſum, and for ſuch time, as the ſaid court ſhall judge proper, according to the circumſtances of the offence, and in ſuch caſe ſhall be further impriſoned until ſuch ſureties ſhall be given. *ſ.* 4. Pretending to witchcraft.

Witneſſes. See Evidence.

Women.

Concerning women conſidered as *wives*, or *femes covert*; ſee title Wife.

Concerning women having two huſbands, or men two wives; ſee title Polygamy.

Concerning the raviſhment of women: ſee title Rape.

For clandeſtine marriages, and counterfeiting marriage licences and regiſters; ſee title Marriage.

1. IF any perſon ſhall unlawfully and carnally know and abuſe any woman child under the age of ten years, he ſhall be guilty of felony without benefit of clergy. 18 *El.* *c.* 7. Carnally knowing a female child under ten,

Taking a woman by force.

2. None ſhall take by force any maiden within age (that is, the age of 12 years, being the age of conſent to marriage, 2 *Inſt.* 182.) by her own conſent nor without; nor any wife or maiden of full age, nor any other woman againſt her will; on pain of impriſonment for two years, and after, fine at the king's will. 3 *Ed.* 1. *c.* 13.

Forcing her to become bound.

3. If any perſon take by force, or otherwiſe, any woman ſole, having any ſubſtance of lands, tenements, or moveable goods, and inforce her before ſhe be ſet at liberty, to bind herſelf to him by ſtatute or obligation; ſuch bond ſhall be void. 31 *H.* 6. *c.* 9.

The offence commonly called ſtealing an heireſs.

4. Whereas women, as well maidens, as widows, and wives, having ſubſtances, ſome in goods moveable, and ſome in lands and tenements, and ſome being heirs apparent unto their anceſtors, for the lucre of ſuch ſubſtances, are oftentimes taken by miſdoers, contrary to their will, and after married to ſuch miſdoers, or to other by their aſſent, or defiled,—it is enacted, that what perſon that taketh any woman ſo againſt her will unlawfully, that is to ſay, maid, widow, or wife, that ſuch taking, procuring, and abetting to the ſame, and alſo receiving wittingly the ſame woman ſo taken againſt her will, and knowing the ſame, be felony; and that ſuch miſdoers, takers, and procurators to the ſame, and receitors knowing the ſaid offence, ſhall be adjudged as principal felons. 3 *H.* 7. *c.* 2. And by the 39 *El. c.* 9. benefit of clergy is taken away from the principals, procurers, and acceſſaries before.

Upon the face of which ſaid ſtatute of the 3 *H.* 7. theſe things are required to make the offence felony; 1. That the maid, wife, or widow, have lands, or tenements, or moveable goods, or be an heir apparent. 2. That ſhe be taken away againſt her will. 3. That the taking was for lucre. And 4. That ſhe be married to the miſdoer, or to ſome other by his conſent; or be defiled (that is, carnally known.) For if theſe concur not, and be ſo laid in the indictment, the miſdoer is not a felon within this ſtatute, but otherwiſe to be puniſhed. 3 *Inſt.* 61. 1 *Haw.* 110.

The ſaid act makes not only the takers, but the procurers, and abettors of the felony, and receivers of the woman wittingly, knowing the ſame, to be all principal felons; the like whereof lord *Coke* ſays he hath not found in any other ſtatute that he remembers. But by a conſtruction of the common law, they that receive the miſdoers, and not the woman, are acceſſaries only. 3. *Inſt.* 61, 62.

But thoſe who are only privy to the marriage, but no way

way parties to the forcible taking away, or consenting thereto, are not within the statute. 1 *Haw.* 110.

It is no manner of excuse, that the woman at first was taken away with her own consent; because if she afterwards refuse to continue with the offender, and be forced against her will, she may from that time as properly be said to be taken against her will, as if she had never given any consent at all; for till the force was put upon her, she was in her own power. 1 *Haw.* 110.

Also, it is not material, whether a woman so taken contrary to her will, be at last married or defiled with her own consent, or not; if she were under the force at the time. 1 *Haw.* 110.

In *Fullwood*'s case, *M.* 13 *C.* it was resolved, that the woman taken away and married, may be sworn and give evidence against the offender, who so took and married her, tho' she be his wife *de facto*. 1 *H. H.* 661.

5. If any person above the age of 14 years, shall unlawfully take or convey, or cause to be taken or conveyed, any maid or woman child unmarried, being within the age of 16 years, out of the possession and against the will of her father, or mother, or guardian; he shall suffer two years imprisonment, or pay such fine as shall be assessed by the court, half to the king, and half to the parties grieved. 4 & 5 *P. & M. c.* 8. *s.* 3. Taking a woman under 16.

H. 15 *G.* 2. *K.* against *Cornforth* and others. The court granted an information against the defendants, for taking away a *natural* daughter under 16, under the care of her putative father; being of opinion it was within this statute. *Str.* 1162.

And if any person shall so take away, or cause to be taken away, *and deflour*, any such maid or woman child; or shall against the will or knowledge of the father, or if he is dead, of the mother having tuition of such child, *contract matrimony* with her by letters, messages, or otherwise; he shall be imprisoned for five years, or pay such fine as shall be assessed by the court, half to the king, and half to the parties grieved. *s.* 3.

And if any woman child or maiden, being above the age of 12 years, or under 16, shall consent or agree to such person so making such contract of matrimony; the next of kin to her shall have, hold, and enjoy her lands during the life of the person so contracting. *s.* 6.

But by the 26 *G.* 2. *c.* 33. No suit shall be had in any ecclesiastical court, in order to compel a celebration of marriage *in facie ecclesiæ*, by reason of any contract of matrimony

trimony whatſoever, whether *per verba de præſenti*, or *per verba de futuro*. And the marriage of any perſon under the age of 21, without the conſent of parents or guardians, ſhall be null and void.

Appeal by a woman. 6. In an appeal by a woman, the appellee cannot wage battle, but muſt put himſelf upon his country. 2 *Haw.* 427.

Peereſſes how to be tried. 7. Peereſſes ſhall be tried as peers, for treaſon or felony. 20. *H.* 6. *c.* 9.

Woman ſtanding mute. 8. Women upon ſtanding mute, are liable to *pain fort & dure*, as men are. 2 *Haw.* 331.

Benefit of clergy. 9. A woman being convicted for an offence, for which a man may have his clergy, ſhall ſuffer the ſame puniſhment as a man ſhould ſuffer, that has the benefit of his clergy allowed; that is, ſhall be burnt in the hand, and further kept in priſon as the court ſhall think fit, not exceeding one year. 3 *W.* *c.* 9.

But ſhe ſhall have the benefit of the ſaid ſtatute but once. 4 & 5 *W.* *c.* 24. *ſ.* 13.

Judgment in treaſon and felony. 10. The judgment againſt a woman, in caſe of high treaſon, is not the ſame as againſt a man traytor, to be hanged, cut down alive, have the bowels taken out, and the body quartered; but to be drawn to the place of execution, and there burned:

And this alſo is the judgment againſt a woman, in caſe of petit treaſon; whereas the judgment againſt a man for petit treaſon is, that he ſhall be hanged:

But in caſe of felony, the judgment is the ſame againſt both man and woman, to be hanged by the neck till dead. 2 *Haw.* 444.

Plea of pregnancy. 11. It is clear, that if a woman quick with child be condemned either for treaſon or felony, ſhe may alledge her being with child in order to get the execution reſpited, and thereupon the ſheriff ſhall be commanded to take her into a private room, and to impanel a jury of matrons, to try and examine whether ſhe be quick with child or not; and if they find her quick with child, the execution ſhall be reſpited till her delivery. But it is agreed, that a woman cannot demand ſuch reſpite of execution, by reaſon of her being quick with child, more than once. 2 *Haw.* 464.

Attending the torn and leet. 12. Women are not obliged to appear at the torn or leet. 2. *Haw.* 57.

Serving the office of conſtable. 13. Mr. *Hawkins* ſeems to be of opinion, that a cuſtom of the inhabitants ſerving the office of conſtable by turns, is good; and that when it comes to the turn of a woman inhabitant, ſhe muſt procure one to ſerve for her. 2 *Haw.* 63.

Wood.

1. IT is proper to inſert here in the firſt place, a clauſe in the ſtatute of the 13 *Ed.* 1. *ſt.* 1. *c.* 46. both upon its own account, and its being referred to afterwards by ſubſequent ſtatutes; *viz. Where ſometimes it chanceth, that one having a right to approve, doth then levy a dyke or an hedge, and ſome by night, or at another ſeaſon, when they ſuppoſe not to be eſpied, do overthrow the hedge or dyke, and it cannot be known by verdict of the aſſize or jury, who did overthrow the hedge or dyke, and men of the towns near will not indict ſuch as be guilty of the fact; the towns near adjoining ſhall be diſtrained to levy the hedge or dyke at their own coſt, and to yield damages.* Pulling down hedges of ground improved.

And by the 3 and 4 Ed. 6. c. 6. *Such perſon as ſhall bring an aſſize hereupon, and have judgment to recover, ſhall have his damages trebled by the judgment of the court.* ſ. 4.

One having a right to approve.] Foraſmuch as the lord ought to divide the parts of the common improved, by the hedge, ditch, or other defence; now this clauſe provideth, that if perſons unknown, either in the night or otherwiſe, ſo ſecretly proſtrate the ditches, hedges, or other fences, as the lord cannot know againſt whom to bring his aſſize or other action; and the men of the towns next adjoining thereunto round about do not indict the miſdoers of the fact, thoſe next towns round about ſhall be diſtrained to make the hedge or ditch at their own coſt, and yield damages to the lord. 2 *Inſt.* 476.

Indict.] That is, indict him at the king's ſuit, either of a riot, force, or treſpaſs: But here it is demanded, what *time* have the next towns round about adjoining to indict the miſdoers, ſeeing there is no time appointed; and the anſwer is, that ſeeing no time is appointed, the law doth appoint (as in many caſes it doth) a year and a day for the indicting of the miſdoers; and by the indictment the lord ſhall know againſt whom to bring his action. 2 *Inſt.* 476.

The towns near adjoining ſhall be diſtrained to levy the hedge or dyke, at their own coſt, and to yield damages.] If the bordering towns do not within a year and a day indict the miſdoers, then ſhall the lord or other party grieved bring his action upon this branch, againſt the towns bordering round about the town wherein the fact was done, and judgment ſhall be given, that they ſhall at their proper coſts make the ditch or hedge, and yield damages; and after judgment given, they ſhall be diſtrained to make the hedge or ditch. 2 *Inſt.* 477.

Cutting down woods wherein there is common of paſture.

2. By the 35 *H.* 8. *c.* 17. intitled, *The bill for the preſervation of woods*, No perſon who ſhall have any woods or underwoods, wherein others have common of paſture, ſhall cut down the ſame, until the fourth part thereof ſhall be ſet out and fenced by the lord with the aſſent of the major part of the tenants; and if they cannot agree, then two juſtices being thereunto appointed by the more number of the juſtices of the ſhire in their quarter ſeſſions, ſhall ſet out the ſame. *ſ.* 7.

Burning coal, wood, barking fruit trees.

3. If any perſon ſhall maliciouſly, willingly, and unlawfully burn, or cauſe to be burned, any heap of wood prepared, cut, and felled, for making of coals, billets, or talwood; or bark any apple trees, pear trees, or other fruit trees; he ſhall forfeit to the party grieved treble damages by action of treſpaſs at the common law, and alſo 10 *l.* to the king. 37 *H.* 8. *c.* 6. *ſ.* 4.

Robbing orchards, breaking hedges, pulling up fruit trees, ſpoiling wood growing.

4. Every perſon who ſhall rob any orchards or gardens; or break or cut any hedge, pales, rails, or fence; or dig, or pull up, or take up any fruit tree or trees in any orchard, garden, or elſewhere, to the intent to take and carry the ſame away; or ſhall cut or ſpoil any woods or underwoods, poles, or trees ſtanding (the ſame not being felony by the laws of this realm); every ſuch perſon, his procurers and receivers, knowing the ſame, being thereof convicted by confeſſion, or oath of one witneſs, before one juſtice (or mayor) ſhall give to the party ſuch recompence and ſatisfaction for damages, and within ſuch time, as the ſaid juſtice ſhall appoint; and the ſame to be only for the firſt fault: And if ſuch offender ſhall be thought by the juſtice not able, or do not make ſuch recompence, then he ſhall commit him to the conſtable where the offence ſhall be committed, or the party apprehended, to be whipped. And for every ſuch offence for which the offender ſhall be eſtſoons committed in form afore limited, the perſon ſo offending to receive the ſaid puniſhment of whipping. 43 *El. c.* 7. *ſ.* 1.

And if the conſtable ſhall not by himſelf, or ſome other execute upon the offender the ſaid puniſhment, the juſtice may commit him to the common gaol till he comply. *ſ.* 2.

Rob any orchards.] Robbing of orchards doth not ſeem to be comprehended in any other ſtatute, ſo that the puniſhment thereof is reſtrained to this ſtatute: But the other offences above-mentioned are further puniſhable by other ſtatutes hereafter following.

Cut or ſpoil any woods or underwoods, poles, or trees ſtanding.] *E.* 2. *An. Q.* & *Burnaby.* The defendant was convicted

victed upon this ſtatute, for cutting down ſeveral trees called lime trees, and damages given of 20 *l.* It was objected, that the number of the trees ought to have been ſet forth, becauſe this ought to be the meaſure of the damages; and if an action ſhould be brought for the treſpaſs, this conviction cannot be pleaded in bar, for it will not appear that the conviction was for the ſame trees; and therefore the number and quantity ought to be mentioned expreſsly in the conviction, as well as in an action for the treſpaſs. And for this cauſe the court was of opinion that the conviction was ill. *Comyns.* 131.

The ſame not being felony by the laws of this realm.] The diſtinction in which caſe ſeemeth to be this: If they be any way annexed to the freehold, as trees growing, or apples growing upon the trees, then the taking and carrying them away is not felony, but only a treſpaſs, for a man cannot ſteal part of the freehold; but if they be ſevered from the freehold, as wood cut, or apples gathered from the trees, then the taking of them is not a treſpaſs only, but felony.

Hedge breaking, and other wood ſtolen.

5. By the 15 *C.* 2. *c.* 2. The conſtable may apprehend, or cauſe to be apprehended, every perſon he ſhall ſuſpect having or carrying any burden of any kind of wood, underwood, poles, or young trees, or bark, or baſt of any trees, or any gates, ſtiles, poſts, pales, rails, or hedgewood, broom or furze;——And by warrant of one juſtice (A) directed to any officer, ſuch officer ſhall have power to enter into and ſearch the houſes, outhouſes, yards, gardens, or other places belonging to the houſes of every perſon they ſhall ſuſpect to have any kind of wood, underwood, poles, or young trees, or bark, or baſt of any trees, or any gates, ſtiles, poſts, pales, rails, or hedgewood, broom, or furze; and where they ſhall find any ſuch, to apprehend the perſons ſuſpected for cutting and taking the ſame: And as well thoſe apprehended carrying, as thoſe in whoſe houſes or other places the ſame ſhall be found, to carry before one juſtice. And if ſuch perſon do not then and there give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice; or elſe ſhall not in ſome convenient time ſo be ſet by the ſaid juſtice, produce the party of whom he bought the ſame, or ſome credible witneſs to depoſe upon oath ſuch ſale thereof, he ſhall be convicted of cutting and ſpoiling the ſame, and puniſhed as by the ſaid act of the 43 *El.* and further by this act:

That is to ſay, he ſhall for the firſt offence give the owner ſuch recompence or ſatisfaction (B) for damages, and within ſuch time, as the juſtice ſhall appoint; and over

and above pay down presently to the overseers for the use of the poor, such sum not exceeding 10*s.* as the justice shall think meet; and if he do not make such recompence, and also pay the said sum to the poor, the said justice shall commit him (C) to the house of correction not exceeding one month, or to be whipped (D) by the constable. And if he shall again commit the said offence, and be thereof convicted as before, he shall be sent to the house of correction for one month, and be there kept to hard labour.

And if he shall again commit the said offence, and be thereof convicted as before, he shall be deemed an incorrigible rogue.

But no person shall be punished by this act, unless he be questioned in six weeks after the offence committed.

Buying of stolen wood.

6. And by the said act of the 15 *C.* 2. *c.* 2. Whosoever shall buy any burdens of wood, or any poles or sticks of wood, or any other the premisses, which may be justly suspected to have been stolen or unlawfully come by; one justice (on complaint in six weeks as aforesaid after the offence committed) may examine the matter on oath; and if he shall find that the same was bought of a person who might justly be suspected to have stolen or unlawfully come by the same, and that the same was stolen or unlawfully come by, he may award the party who bought the same to pay treble value (E) to him from whom it was unlawfully taken; and in default of present payment, may issue his warrant to levy the same by distress (F), and in default of distress, to commit the party to gaol at his own charge, there to remain one month without bail.

Destroying wood growing, or the inclosures thereof.

7. If any person shall either by day or night, cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away, any wood springs, poles, wood, tops of trees, underwoods or coppice woods, thorns or quicksets, without the consent of the owner, or of the person chiefly intrusted with the care and custody thereof; or shall break open, throw down, level, or destroy any hedges, gates, posts, stiles, railing, walls, fences, dikes, ditches, banks, or other inclosure thereof; the owner may have such satisfaction and recompence from the inhabitants of the parishes, towns, hamlets, villages, or places, joining on such wood springs or wood grounds, and recover such damages against such place or places, and in the same manner and form as by the (above recited) act of the 13 *Ed.* 1. *st.* 1. *c.* 46. Unless the offender, by such parishes or places, be convicted in six months. 6 *G. c.* 16. *s.* 1.

——This is to be understood, if the offender is not known.

But

But if the offender is known, then it is enacted as follows; *viz.* If any perſon ſhall in a riotous, open, tumultuous, or in a ſecret and clandeſtine manner, forcibly or wrongfully and maliciouſly, and without conſent of the owner, or perſon chiefly intruſted with the care thereof, cut down, deſtroy, break, bark, throw down, burn, take, deface, ſpoil, or carry away, any wood, or ſprings of wood, under-wood, or coppice wood; or break open, throw down, level, or deſtroy any hedges, gates, poſts, ſtiles, rails, fences, ditches, banks, or incloſures of ſuch woods, woody grounds, coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quickſets; Two juſtices, or the juſtices in ſeſſions, on complaint made by any inhabitant of ſuch pariſh or place, or by the owner of the wood, or by any other, may cauſe the offender to be apprehended, and hear and determine the offence; and on conviction, ſhall commit (G) the offender to the houſe of correction to hard labour for three months, and where there is no houſe of correction, then to the priſon for four months, and ſhall alſo order the offender to be publickly whipped by the maſter of ſuch houſe of correction once a month, during ſuch three months, if it is in a borough; or in the market town where ſuch houſe of correction ſtands, or in the next market town next adjacent to ſuch houſe of correction, on the market day, between the hours of eleven and two. And where there is no houſe of correction, the ſaid juſtices ſhall order him to be whipt by the common hangman once a month, during ſuch four months, on the market day of ſuch borough, or on the market day of ſome town, between the hours of eleven and two. 1 *G. ſt.* 2. *c.* 48. *ſ.* 2. 6 *G. c.* 16. *ſ.* 2. And before he ſhall be diſcharged, he ſhall find ſufficient ſureties for his good behaviour for two years. 1 *G. ſt.* 2. *c.* 48. *ſ.* 3.

And by the 29 *G.* 2. *c.* 36. *ſ.* 8. If any perſon ſhall unlawfully cut, take, deſtroy, break, throw down, bark, pluck up, burn, deface, ſpoil or carry away, any tree growing in any waſte, wood, or paſture, in which any perſon hath right of common; he ſhall be in like manner convicted, and incur the like penalty, as by the 6 *G. c.* 16.

8. By the 22 & 23 *C.* 2. *c.* 7. If any perſon ſhall in the night time maliciouſly, unlawfully, and willingly deſtroy any plantations of trees, or throw down any incloſures; he ſhall forfeit to the party grieved, treble damages. *ſ.* 5. Deſtroying plantations, or throwing down incloſures in the night.

And three juſtices (1 Q.) may inquire thereof, in ſix months, as well by a jury, as by examination of witneſſes on

on oath, or by any lawful ways, which to them ſhall ſeem meet. *ſ.* 6, 7.

Setting fire to wood.

9. If any perſon ſhall maliciouſly ſet on fire, or burn, or cauſe to be burnt, any wood, underwood, or coppice, or any part thereof; he ſhall be guilty of felony. 1. *G. ſt.* 2. *c.* 48. *ſ.* 4.

Deſtroying trees, or burning wood by the Black act.

10. By the 9 *G. c.* 22. commonly called the Black act, If any perſon ſhall unlawfully and maliciouſly cut down, or otherwiſe deſtroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, ſhelter, or profit; or ſet fire to any ſtack of wood; or forcibly reſcue any perſon in cuſtody for any the ſaid offences; or by promiſe or reward procure any to join him therein; he ſhall be guilty of felony without benefit of clergy. And the hundred ſhall anſwer damages (not exceeding 200 *l.*) as in caſes of robbery by the 27 *El.*

That is to ſay, the party may either take remedy for his damages againſt the hundred by this act; or againſt the pariſh, town, hamlet, vill, or place where the offence was committed, by the aforeſaid acts of the 1 *G ſt.* 2. *c.* 48. and 6 *G. c.* 16. as to him ſhall ſeem moſt meet. 29 *G.* 2, *c.* 36. *ſ* 9.

Encouragement of the plantation of wood for relief of the poor.

11. It ſhall be lawful for the king, and all other owners of waſtes, woods, and paſtures, wherein any perſons or bodies politick have common of paſture, with the aſſent of the major part in number and value of the owners and occupiers of tenements to which the right of common of paſturage doth belong; and for the major part in number and value of the owners and occupiers of ſuch tenements, with the aſſent of the owner of the ſaid waſtes, woods, and paſtures; and for any other perſon, with the aſſent and grant of the owner of ſuch waſtes, woods, and paſtures, and of the major part in number and value of the owners and occupiers of ſuch tenements,—to incloſe and keep in ſeveralty, for the growth and preſervation of timber or underwood, any part of ſuch waſtes, woods, and paſtures, for ſuch time, and in ſuch manner, and upon ſuch conditions, as ſhall be agreed by them reſpectively. 29 *G.* 2. *c.* 36. *ſ.* 1.

And this word *owners* ſhall extend to tenants for life, and for term of years: Provided, that nothing done by ſuch tenants for life or years, ſhall have effect or continuance after determination of ſuch their eſtate. 31 *G.* 2. *c.* 41.

And all bodies politic or corporate, whether aggregate or ſole, feoffees in truſt, executors, adminiſtrators, guardians, committees, or other truſtees whatſoever, and the huſbands

bands or femes covert, may agree to such inclosure, and such their agreement shall be valid. 29 *G.* 2. *c.* 36. *s.* 5.

And in case the owner of such wastes, woods, or pastures, and the major part in number and value of the owners and occupiers of such tenements, shall jointly agree to assign their right for the purpose aforesaid to any other person; and such owner shall not have an estate in fee simple therein, or shall be restrained from alienating; the recompence to be paid to such owner, shall be either by a grant of a share of the profit from the sale of such timber or underwood, or by a grant of other lands, or of an annuity or rent charge issuing out of the ground so inclosed, or out of other lands: such equivalent to be held and enjoyed by the owner of such wastes, woods, and pastures, and such as shall be intitled to the same in reversion, remainder, or succession, in like manner as the estate in such woods, wastes, or pastures, is limited to be held and enjoyed. *s.* 2.

And where any recompence shall be agreed to be given for such inclosure to, or to the benefit of, the owners and occupiers of such tenements; it shall be made either by a grant of a share of the profit which shall arise from the sale of such timber or underwood; or by a grant of other lands; or by some annuity or rent charge issuing out of the ground so inclosed, or out of other lands; or shall be paid in money, to be placed out at interest on publick securities, or laid out in the purchase of lands, or of some annuity or rent charge issuing out of lands; and the produce thereof until such purchase shall be made, and also every recompence to be made by virtue of the said act of the 29 *G.* 2. shall be applied and given to the persons interested in the right of common, in proportion to their respective interests. 29 *G.* 2. *c.* 36. *s.* 2. 31 *G.* 2. *c.* 41.

And where the inhabitants of any parish or townshiip shall be willing to acquire such right of inclosure, for the employment and benefit of their poor, they may (by the consent and direction of the major part of the inhabitants assembled at a vestry or publick meeting to be held for that purpose, publick notice thereof in the church being first given on three Sundays before) pay the recompence for the same, and the charges of inclosing and preserving such grounds, out of the poor rate; and shall apply the profit from the sale of such timber or underwood, towards the relief of the poor. *s.* 2. *Note, here is no allowance for the charges of* planting.

And the agreement for such inclosure shall be in writing, and signed by the parties, and within three months after the exe-

execution thereof be inrolled by the clerk of the peace where the greater part of such wastes, woods, or pastures shall lie. *s.* 3.

And persons aggrieved by such agreement may within six months after the inrollment appeal to the sessions, whose determination shall be final. And if no such appeal shall be made, the agreement shall be for ever binding. *s.* 4.

And if any person, after the time limited for such appeal, shall either by day or night unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away, any trees growing in any such inclosure, without consent of the owner or owners thereof; such owner shall have such remedy, and receive such satisfaction and recompence from the inhabitants of such parishes, towns, hamlets, villages, or places adjoining to such inclosures, and recover such damages against them, and in the same manner and form, as is directed by the aforesaid act of the 13 *Ed.* 1. *st.* 1. *c.* 46. unless the offender or offenders shall be convicted in six months. *s.* 6.

And two justices, or the justices in sessions, on complaint, may cause every such offender to be apprehended, and hear and determine the offence, and inflict the like penalty as is directed by the aforesaid act of the 6 *G.* *c.* 16. *id. s.* 7.

Preservation of wood in forests.

12. For the better preventing the destruction of timber trees and other trees, underwood, and covert, in forests and chases; it shall be lawful for every surveyor of his majesty's woods, and his lawful deputy, and for the officers and keepers of any forest or chase, (besides the penalties for destroying the trees or underwood,) to seize and take away for his own use, any saw, axe, hatchet, bill-hook, or other instrument, used by any person, whom they shall find unlawfully stocking up, sawing, cutting down, topping, lopping, or destroying, any timber tree, or other tree, underwood, or covert, within such forest or chase. 4 *G.* 3. *c.* 31.

Importing wood.

13. By the 5 *G.* 3. *c.* 45. certain premiums are given on the importation of deals, planks, boards, and timber from the colonies in *America*; and if any dispute shall arise between the officers of the customs and the importers, at the port of *London*, as to the quality or condition of the wood or timber, the commissioners may call two merchants or others to declare on oath their judgment thereof. And if it be in any of the out-ports; proper descriptions of the quality and condition, attested by two merchants or other judicious persons, who shall be sworn thereto by a justice of the peace, shall be sent to the said commissioners.

14. By

14. By the 1 & 2 *P. & M. c.* 5. No perſon ſhall carry any wood out of the realm, on pain that the owner of the ſhip ſhall forfeit the ſhip and tackle; the owner of the wood, double value of the wood; and the maſter and mariners all their goods, and be impriſoned for a year. *ſ.* 2. Exporting wood.

And if any perſon ſhall carry any wood to any ſhip, to be tranſported; the owners, maſters, and mariners, ſhall forfeit in like manner. *ſ.* 3.

And if any perſon ſhall obtain of the king a licence to tranſport wood, and ſhall carry more than is contained in his licence; he ſhall forfeit treble value, and be impriſoned for a year. *ſ.* 4.

And they which have licence, ſhall lade all at one place certain; on pain of forfeiting all their goods and chattels. *ſ.* 5.

The ſaid forfeitures to be half to the king, and half to him that ſhall ſue in any court of record: Moreover, all and ſingular juſtices of the peace, within three years after any offence committed, may hear and determine the ſame by a jury. *ſ.* 6.

A. Warrant to ſearch for ſtolen wood; on the 15 *C.* 2. *c.* 2.

Weſtmorland. { To the conſtable of ——

WHEREAS A. I. *of* —— *yeoman, hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that divers quantities of wood, within the ſpace of ſix weeks laſt paſt, have been cut, taken and carried away off and from his lands at* —— *in the ſaid county* [or as the caſe ſhall be]; *and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that the ſaid wood, or part thereof, is concealed in the houſes, outhouſes, yards, gardens, or other places belonging to ſuch houſes of* A. O. *of* —— *yeoman, at* —— *aforeſaid*; *Theſe are therefore to require you to enter into and ſearch the ſaid houſes, outhouſes, yards, gardens, or other places belonging to ſuch houſes of him the ſaid* A. O. *at* —— *aforeſaid*; *and if on ſuch ſearch you ſhall there find any ſuch wood, that then you apprehend the perſon in whoſe houſe, outhouſe, or other place it ſhall be found, and bring him before me, or ſome other of his majeſty's juſtices of the peace for the ſaid county, that ſuch proceedings may be had thereupon, as to law doth appertain. Given under my hand and ſeal at* —— *in the ſaid county, the* —*day of* —*in the*——*year* ——

B. Order

B. Order for satisfaction to the owner; on the 15 C. 2. c. 2.

Westmorland. WHEREAS A. I. *of* —— *in the said county, yeoman, on the* —— *day of* —— *now last past, did make oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that on or since the* —— *day of* —— *now last past, a certain quantity of wood, the property of him the said* A. I. *at* —— *in the parish of* —— *in the county aforesaid, was cut and spoiled, and from thence taken and carried away; and that he had just cause to suspect, and did suspect, that* A. O. *of* —— *in the said county, yeoman, did cut, spoil, take, and carry away the same; And whereas the said* A. O. *was on the* —— *day of* —— *now last past, apprehended by* A. C. *constable of* —— *in the said county, carrying wood suspected to be stolen by him the said* A. O, [Or, *whereas a certain quantity of wood, to wit* (here specify the same), *suspected to be stolen, was this day, by virtue of my warrant for that purpose directed to the constable of* —— *in the said county, found in the house* (or other place) *of the said* A. O. *at* —— *aforesaid*] *And whereas the said* A. O. *being now brought before me, hath not given to me any satisfactory account how he came by the said wood, nor can produce the party of whom he bought the same, nor any credible witness to testify upon oath the sale thereof; therefore the said* A. O. *is convicted by me of cutting, spoiling, taking, and carrying away the said wood; And whereas also it is duly proved before me, that* A. I. *of* —— *aforesaid, yeoman, was and is the owner of the said wood, and that the said offence was committed at* —— *aforesaid, in the parish of* —— *in the said county, I do therefore hereby order and appoint the said* A. O. *within the space of* —— *days now next ensuing, to pay unto the said* A. I. *the sum of* —— *in recompence and satisfaction for damages done unto him the said* A. I. *by him the said* A. O. *in cutting, spoiling, taking, and carrying away the said wood; and I do also hereby order the said* A. O. *within the space of* —— *days now next ensuing as aforesaid, to pay to the overseers of the poor of the parish of* —— *aforesaid, for the use of the poor of the said parish, the sum of* 10 s. *for his said offence. Given under my hand and seal at* —— *in the said county, the* —— *day of*

C. Com.

C. Commitment thereupon for non-payment.

Weſtmorland. { To the conſtable of —— and to the keeper of the houſe of correction at —— in the ſaid county.

WHEREAS A. I. *of —— in the ſaid county, yeoman, on the —— day of —— now laſt paſt, did make oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that within the ſpace of ſix weeks then laſt paſt, a certain quantity of wood, the property of him the ſaid* A. I. *at —— in the pariſh of —— in the county aforeſaid, was cut and ſpoiled, and from thence taken and carried away; and that he had juſt cauſe to ſuſpect, and did ſuſpect, that* A. O. *of —— in the ſaid county, yeoman, did cut, ſpoil, take, and carry away the ſame; And whereas the ſaid* A. O. *was on the —— day of —— now laſt paſt, apprehended by* A. C. *conſtable of —— in the ſaid county, carrying wood ſuſpected to be ſtolen by him the ſaid* A. O. [Or, *whereas a certain quantity of wood,* (ſpecifying the particulars) *ſuſpected to be ſtolen, was on the —— day of —— now laſt paſt, by virtue of my warrant for that purpoſe directed to the conſtable of —— in the ſaid county, found in the houſe* (or other place) *of the ſaid* A. O. *at —— aforeſaid;*] *And whereas the ſaid* A. O. *on the —— day of —— now laſt paſt, having been brought before me, did not and could not give to me any ſatisfactory account how he came by the ſaid wood, nor could produce the party of whom he bought the ſame, nor any credible witneſs to teſtify upon oath the ſale thereof, and thereupon was by me convicted of cutting and ſpoiling the ſaid wood, and ordered to pay to the ſaid* A. I. *the owner of the ſaid wood, the ſum of —— within —— days then next enſuing, in recompence and ſatisfaction for damages, and alſo the ſum of* 10 s. *to the overſeers of the poor of the pariſh of —— aforeſaid where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; And whereas it appears to me, that the ſaid ſeveral ſums have been duly demanded of him the ſaid* A. O. *but that he the ſaid* A. O. *hath refuſed, and doth refuſe to pay, and hath not yet paid the ſame, nor any part thereof: I do therefore hereby require you the ſaid conſtable of —— aforeſaid, to convey the ſaid* A. O. *to the ſaid houſe of correction at —— aforeſaid, and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the ſaid keeper to receive him into your cuſtody in the ſaid houſe of correction, and*

and there to detain him for the ſpace of —— days. Herein fail you not. Given under my hand and ſeal, at —— in the ſaid county, the —— day of —— in the —— year ——

D. If inſtead of being ſent to the houſe of correction, he is ordered to be whipt, then ſay, —— *I do therefore hereby command you the ſaid conſtable forthwith to receive the ſaid* A. O. *into your cuſtody, and to ſtrip him naked from the middle upwards, and whip him until his body be bloody.*

E. Order for the buyer of ſtolen wood, to pay treble damages; on the 15 *C.* 2. *c.* 2.

Weſtmorland. WHEREAS *it hath been duly proved before me —— eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of —— yeoman, did within the ſpace of ſix weeks now laſt paſt, buy ſeveral burdens of wood of* B. O. *of —— yeoman, and that he the ſaid* B. O. *is juſtly ſuſpected to have ſtolen the ſame from* A. I. *of —— yeoman, and that the ſaid wood, at the time when the ſaid* A. O. *ſo bought the ſame, was of the value of* 10 s. *I do therefore hereby order, that the ſaid* A. O. *do forthwith pay unto the ſaid* A. I. *the ſum of* 30 s. *the ſame being treble value of the ſaid wood ſo by him bought as aforeſaid. Given under my hand and ſeal at —— in the ſaid county, the —— day of —— in the —— year of the reign of ——.*

F. Warrant of diſtreſs for non-payment of the ſame.

Weſtmorland. { —— Here recite the order —— Then ſay, *And whereas the ſaid* A. O. *hath not paid to the ſaid* A. I. *the aforeſaid ſum of* 30 s. *nor any part thereof; Theſe are therefore to command you to make diſtreſs of the goods and chattels of him the ſaid* A. O. *and if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you made, the ſaid ſum of —— together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, pay the ſaid ſum of —— unto him the ſaid* A. I. *returning the overplus upon demand, unto*

unto him the said A. O. *the reasonable charges of taking, keeping and selling the said distress being thereout first deducted. Given*, &c.

G. Commitment for destroying trees; on the 1 *G. st.* 2. *c.* 48. and 6 *G. c.* 16.

Westmorland. { To the constable of —— and to the keeper of the house of correction at —— in the said county.

FORASMUCH *as* A. O. *of* —— *in the county aforesaid, yeoman, is this day duly convicted before us* ——, *esquires, two of his majesty's justices of the peace for the said county, for that he the said* A. O. *on the* —— *day of* —— *now last past, at* —— *aforesaid, in the county aforesaid, did wrongfully and maliciously cut down two ash trees* [or as the case shall be], *the property of* A. I. *of* —— *yeoman, without the consent of him the said* A. I. *the owner thereof, or of any other person chiefly intrusted with the care and custody thereof; We do therefore hereby command you the said constable, to convey the said* A. O. *to the said house of correction at* —— *aforesaid, in the county aforesaid, and to deliver him to the keeper thereof, together with this precept. And we do also hereby require you the said keeper of the said house of correction, to receive him the said* A. O. *into your custody in the said house of correction, and him there keep to hard labour, for the space of three months, now next ensuing, and until he shall find sufficient sureties for his good behaviour for two years: And we do likewise hereby order you the said keeper of the said house of correction, publickly to whip him the said* A. O. *once in every month, during the said three months, in the market town of* —— *in the said county, on the market day there, between the hours of eleven and two. And for so doing, this shall be your sufficient warrant. Given under our hands and seals, at* —— *in the said county, the* —— *day of* —— *in the* —— *year* ——.

Wool. See Woollen manufacture.

Woollen manufacture.

CONcerning differences between clothiers and their ſervants or workmen, ſee title Servants

I have nothing to do under this title, but to reduce it into ſome kind of order, out of the confuſion of above an hundred ſtatutes; for, to the honour either of the laws, or of the people, there hath not occurred in all the books, one adjudged caſe, throughout this extenſive title. In truth, it is not the induſtrious labourer, but the idle and profligate, that doth create moſt trouble in the courts of law.

After having premiſed, that in almoſt all the laws hereafter ſpecified under this title, it is enacted, that if any perſon ſhall be ſued for any thing done in putting them in execution, he may plead the general iſſue, and have treble coſt; I ſhall reduce theſe ſtatutes for the encouragement of the woollen manufacture, under the following heads:

I. I ſhall premiſe ſome ſtatutes which are not general enough to be treated of more at large.

II. Concerning the winding of wool by the ſeller.

III. Laws to prevent the exportation of wool from Great Britain, *and of wool and woollen cloth from* Ireland; *and therein alſo of fuller's earth.*

IV. Concerning cards for manufacturing of wool.

V. Concerning the deceitful working of woollen cloth.

VI. Concerning the fulling of cloth.

VII. Concerning the ſearching of cloth, and therein of the length, breadth, and weight thereof.

VIII. Concerning the dying of cloth.

IX. Concerning tenters, and the ſtretching of cloth.

X. Concerning the dreſſing of cloth.

XI. Concerning mixed or medley broad cloth in particular.

XII. Concerning the Yorkſhire *manufacture in particular.*

XIII. Concerning burying of the dead in woollen cloth.

XIV. Againſt importation of woollen cloth.

XV. Encouragement of the exportation of woollen manufactures.

I. Statutes

I. Statutes not general enough to be treated of more at large.

7 *Ed.* 4. *c.* 1. Worſted weavers in *Norwich* and *Norfolk.*
12 *H.* 7. *c.* 1. Worſted, ſays, and ſtamins in *Norfolk.*
5 *H.* 8. *c.* 2. White ſtraits in *Devon.*
6 *H.* 8. *c.* 8. Straits in *Devon.*
14 & 15 *H.* 8. *c.* 3. Worſteds in *Yarmouth* and *Lynn.*
14 & 15 *H.* 8. *c.* 11. Veſes in *Suffolk.*
25 *H.* 8. *c.* 18. Clothiers in *Worceſterſhire.*
33 *H.* 8. *c.* 3. Folding of cloths in *North Wales.*
33 *H.* 8. *c.* 16. Worſted yarn in *Norfolk.*
1 *Ed.* 6. *c.* 6. Worſted yarn in *Norfolk.*
5 & 6 *Ed.* 6. *c.* 24. Hats, dornecks, and coverlets in *Norwich* and *Norfolk.*
1 & 2 *P.* & *M. c.* 14. Ruſſels ſattens, ſattens reverſes, and fuſtians of *Naples*, in *Norwich.*
2 & 3. *P.* & *M. c.* 13. An act for the inhabitants of *Halifax* to buy wools.
1 *El. c.* 14. Woollen cloths in divers towns in the county of *Eſſex.*
8 *El. c.* 7. Drapers, cottoners, and frizers of *Shrewſbury.*
14 *El. c.* 12. Drapers, cottoners, and frizers of *Shrewſbury.*
35 *El. c.* 10. *Devonſhire* kerſeys or dozens.
12 *C.* 2. *c.* 22. Bay making in the *Dutch* bayhall at *Colcheſter.*
13 & 14 *C.* 2. *c.* 5. Stuffs in *Norfolk* and *Norwich.*
22 & 23 *C.* 2. *c.* 8. *Kidderminſter* ſtuffs.
1 *G. ſt.* 2 *c.* 41. Bay making in *Colcheſter.*
9 *G. c.* 9. An act for the better qualifying the manufacturers of ſtuffs and yarn in the city of *Norwich*, and liberties thereof, to bear offices of magiſtracy in the ſaid city, and for regulating elections of ſuch officers.
3 *G.* 2. *c.* 8. Regulating elections in *Norwich.*

II. Concerning the winding of wool by the ſeller.

1. No man ſhall make any inwinding within the fleece, at the rolling up of his wool; nor put in the ſame, locks, pelt wool, tar, ſtones, ſand, earth, graſs, nor any dirt; and if he do, the party grieved may bring his action at common law of treſpaſs and deceit. 8 *H.* 6. *c.* 22.
2. No perſon ſhall wind any fleece not ſufficiently waſhed,

except in counties where they do not uſe to waſh ſheep; nor ſhall wind within any fleece, clay, lead, ſtones, ſand, tails, deceitful locks, cot, cals, comber, lamb's wool, or any other thing whereby the fleece may be the more weighty, to the deceit and loſs of the buyer, (except where fleeces are ſold by number, and not by weight;) on pain that the ſeller ſhall forfeit 6 *d.* a fleece, half to the king, and half to him that ſhall ſue. 23 *H.* 8. *c.* 17.

III. Laws to prevent the exportation of wool from Great Britain, *and of wool and woollen cloth from* Ireland; *and therein alſo of fuller's earth.*

Several things premiſed.

1. To avoid frequent repetitions under this head, it may be proper to premiſe (once for all) theſe things following:

(1) Notwithſtanding the limitation of actions by the proſecutor in the following ſections, to one year after the offence committed: yet by a general clauſe 9 & 10 *W.* 4. *c.* 10. The king may cauſe perſons guilty of exporting wool, woolfells, fuller's earth, or ſcouring clay, to be proſecuted at any time in three years. *ſ.* 9.

(2) That all actions, ſuits, and informations upon any act for preventing exportation of wool, wool-fells, wool-flocks, mortlings, ſhortlings, worſted, bay, or woollen yarn, cruels, or wool ſlightly manufactured, or matraſſes, or beds ſtuffed with combed wool, or wool fit for combing, fuller's earth, fulling clay, tobacco pipe clay, or any other ſcouring earth or clay, from *Great Britain* or *Ireland*; or for preventing the exportation from *Ireland* into foreign parts, of cloth, ſerges, bays, kerſeys, frizes, druggets, ſhalloons, ſtuffs, cloth ſerges, or any other drapery made of or mixed with wool, manufactured in *Ireland*, —— may be entered and proſecuted (except as is herein after otherwiſe expreſſed) in any court of record at *Weſtminſter*, or in the court of exchequer in *Scotland*, or at the quarter ſeſſions of the peace, or before any two juſtices out of ſeſſions in a ſummary way, or in *Ireland* by any law relating to the revenue. And if the property be claimed by any perſon, the proof ſhall lie upon him, and not on the officer or ſeizer. 12 *G.* 2. *c.* 21. *ſ.* 18.

Which clauſe hath enlarged this article very much; by bringing in all thoſe ſtatutes, with which the juſtices before had nothing to do.

(3). And if the proſecution is in any court of record at *Weſtminſter*, for any of theſe offences, in or before the ſtatute of the 10 & 11 *W.* *c.* 10. a *capias* ſhall iſſue after the firſt proceſs, ſpecifying the ſum of the penalty ſued for; and

and such person shall give good bail to the officer serving the process, to appear to answer to the prosecution; and at the time of appearance shall give bail in court, to pay the penalties if convicted, or yield his body to prison. *s.* 20.

And if any person shall be in prison for want of bail, for exportation of wool or wool-fells (or for aiding or abetting the same, 12 *G.* 2. *c.* 21. *s.* 27.) and shall refuse to appear or plead to a declaration or information to be delivered to him or to the goaler, by the space of one term, judgment shall be entered against him by default; and if judgment be so obtained against him by default, (or by verdict or otherwise), and he pay not in three months the sum recovered, the court shall order him to be transported for seven years. 4 *G. c.* 11. *s* 6.

(4) And to prevent collusive seizures, or fraudulent agreements to evade the penalties, None but officers of the customs, excise, or salt, except the officers of the guard ships hereafter mentioned, shall enter informations of seizures of wool or woollen goods; which shall be prosecuted in their, or in the attorney general's name, and not otherwise. 12 *G.* 2. *c.* 21. *s.* 14, 15.

And if such officer make any such collusive seizure, or fraudulent agreement, he shall forfeit 200 *l.* and be disqualified for any office in the revenue; and the owner making such agreement with him, shall forfeit treble value; to him who shall sue in the courts at *Westminster*, *Dublin*, or *Edinburgh*. id. *s.* 16.

But if any person concerned in such fraudulent seizure or agreement, shall first (in three months) discover his offence to the commissioners of the customs, so that one accomplice be convicted; he shall be discharged of the penalties, and shall have the whole money recovered on the conviction (the charges first deducted) *s.* 17.

And if any person shall oppose or hinder any the said officers, or their assistants, in seizing any the goods before mentioned; or if any person armed, or disguised, shall attempt to rescue any the said goods seized; he shall be transported for seven years. *s.* 26.

And moreover, if any person offer a bribe to any officer for connivance, he shall forfeit 300 *l.* to him who shall sue in any court of record at *Westminster*. *s.* 25.

(5) On condemnation of any wool or other goods above mentioned, the commissioners of the customs respectively shall cause them to be publickly sold to the best bidder, where they shall think proper; and out of the produce of such sale, shall cause the charges of condemnation and sale

to be paid, and the remainder to such person who shall seize, inform, or sue. 12 *G.* 2. *c.* 21. *s.* 20.

But if the officers shall receive information from any person, whereby any seizure is made, or any prosecution effected; such informer shall have half of what shall be recovered. *s.* 21.

And if any person convicted in the penalty of 3 *s.* a pound (hereafter mentioned) be not able to pay; the commissioners may cause 1 *s.* a pound to be paid to the informer or prosecutor, by the receiver of the revenue. *s.* 22.

And for the prosecutor's further encouragement, by the 19 *G.* 2. *c.* 34, hereafter following, If on an information for seizure of wool (during the continuance of the said act) a verdict is found for the claimer; yet if the judge shall certify upon the record, that there was probable cause of seizure, the claimer shall have no costs. *s.* 16.

Exporting of wool, felony.

2. By the 13 & 14 *C.* 2. *c.* 18. The exportation of wool was made felony; but this was repealed by the 7 & 8 *W.* *c.* 28. and the preamble to the repealing clause sets forth, that by the severity of the penalty, the prosecution of offenders had not been so effectually put in execution. But it doth not appear, why a reward for the informer or prosecutor was not thought of at that time.

Pecuniary and other penalties and forfeitures.

3. By the 12 *C.* 2. *c.* 32. No person shall export, nor pack or load upon any horse, cart, or carriage, nor lay on board, with intent to export any wool, wool fells, mortlings, shortlings, or any yarn made of wool, or any wool flocks, or any fuller's earth, or fulling clay; on pain of forfeiting the same, and that every offender shall forfeit moreover 3 *s.* for every pound weight thereof. *s.* 1, 3.

(By the 7 & 8 *W.* *c.* 28. which, by the way, is a confused and ill penned act, another penalty is appointed, to wit, the forfeiture of such goods, and treble value, with treble costs; so that it seemeth, the offender may be prosecuted either for the wool and 3 *s.* a pound, or for treble value with treble costs.)

And the owner of the ship, knowing the offence, shall forfeit all his interest in the ship and furniture. 12 *C.* 2. *c.* 32 *s.* 3. 7 & 8 *W.* *c.* 28. *s.* 8.

And the master and mariners, knowing the offence, and assisting thereunto, shall forfeit all their goods and chattels, and be imprisoned three months. 12 *C.* 2. *c.* 32. *s.* 3.

And by the 6 *G.* *c.* 21. If the master, purser, or other person taking charge of the ship, shall suffer any of the said goods, or any tobacco pipe clay, to be taken in from shore, to

to be carried beyond sea; he shall, besides any former penalties, be imprisoned six months. *f.* 32.

But if any master, mate, or mariner, shall in six months give an account to the commissioners of the customs, of such ship, and goods, and offenders, so as any may be convicted; he shall be indemnified, and shall have moreover three fourths of the penalties recovered, clear of charges, and the king shall have the other fourth, charges deducted. 12. *G.* 2. *c.* 21. *f.* 23.

And any merchant, or other person, offending herein, shall be disabled to require any debt or account belonging to him from any factor or other. 12 *C.* 2. *c.* 32. *f.* 4.

And the said offences may be tried either in the county where the goods were packed, loaden, or laid aboard, or where the offender is apprehended 12 *C.* 2. *c.* 32. *f.* 5.

And the ship, if an alien, or person not inhabiting in *England*, be the owner or part owner thereof, shall be forfeited to the king. 12 *C.* 2. *c.* 32. *f.* 9.

And all persons aiding or assisting therein, being convicted in one year, shall suffer three months imprisonment, 7 & 8 *W.* *c.* 28. *f.* 10, 11. Provided, that the first three persons, who have been aiding or assisting (not being owners or part owners thereof) who shall inform any justice of the peace of such offence, whereby the penalties may be recovered, shall not suffer such penalty. *f.* 11.

And moreover, all such exportation shall be deemed a publick nusance. 13 & 14 *C.* 2. *c.* 18. *f.* 11.

Exporting wool slightly wrought.

4. And no coverlids, waddings, or other manufactures, slightly wrought, so as they may be reduced to wool again; or mattrasses or beds stuffed with combed wool, or wool fit for combing, shall be exported from *Great Britain* or *Ireland*; on the like pain as for exporting wool. 12 *G.* 2. *c.* 21. *f.* 9.

Exporting fullers earth in the name of tobacco pipe clay.

5. And whereas fuller's earth, or fulling clay, is exported under colour of tobacco pipe clay; therefore no tobacco pipe clay shall be exported, on pain of 3 *s.* a pound. 13 & 14 *C.* 2. *c.* 18. *f.* 8.

Exporting fuller's earth to Ireland.

6. Nor shall any fuller's earth, or scouring clay, be exported into *Ireland*; on pain of 1 *s.* a pound. 9 & 10 *W.* *c.* 40. *f.* 2.

Exporting wool to Jersey, Guernsey, &c.

7. Nevertheless, wool may be exported from *Southampton*, to *Jersey*, *Guernsey*, *Sark*, and *Alderney*, for the sole use of the inhabitants there; so as the person shipping the same deliver to the customer of the port, a writing under the seal of the governor of the island, or his deputy, setting forth that such person is authorized to export thither such a quan-

tity, and that he hath entred into bond to land it there; and ſo as it exceed not in one year to *Jerſey* 4000 tods, *Guernſey* 2000, *Alderney* 400, and *Sark* 400; every tod not exceeding 32 pounds. 12 *C.* 2. *c.* 32. *f.* 12, 13, 14. 1 *W.* *c.* 32. *f.* 14.

Packing of wool. 8. And no wool, wool fells, mortlings, ſhortlings, wool flocks, worſted, bay or woollen yarn, ſhall be packed up in any box, barrel, caſk, caſe, cheſt, or any other package, but only in packs of leather or packcloth; on which ſhall be marked on the out ſide the words WOOL or YARN, in large letters not leſs than three inches long; on pain of forfeiting the ſame, and the package, and 3 *s.* for every pound weight, to be paid by the owner or packer. 12 *G.* 2. *c.* 21. *f.* 10.

To be carried only by day. 9. And no wool, wool fells, mortlings, ſhortlings, woollen yarn, wool flocks, fuller's earth, fulling clay, or tobacco pipe clay, ſhall be carried by land, but in the day time only, namely, from *Mar.* 1. to *Sept.* 29. between four in the morning, and eight at night; and from *Sept.* 29. to *Mar.* 1. between ſeven in the morning, and five at night; on pain of forfeiting the ſame or the value. 13 & 14 *C.* 2. *c.* 18. *f.* 9.

Carrying wool from port to port, or by land near the coaſt. 10. Every owner of wool, who ſhall carry, or cauſe to be carried any wool, (wool fells, mortlings, ſhortlings, yarn made of wool, wool flocks, fuller's earth, fulling clay, or tobacco pipe clay, 5 *G.* *c.* 11. *f.* 14.) to any port or place on the ſea coaſt, with intention to convey the ſame to any other port or place on the coaſt, from whence the ſame may be carried off to foreign parts; ſhall firſt cauſe an entry thereof to be made at the port, from whence it is intended to be conveyed, containing the weight, mark, and number, before he carry the ſame within five miles of ſuch port; on pain of forfeiting the ſame, and alſo the horſes, carts, and other carriages; and alſo of ſuffering and forfeiting, as by the other laws in force againſt the exportation of wool. 1 *W.* *c.* 32. *f.* 2. —But this ſhall not hinder any perſon from carrying his wool home from the place of ſhearing, though it be within five miles of the ſea; provided that in ten days after ſhearing, and before he remove the wool, he do under his hand certify to the next officer of the cuſtoms, the true number of fleeces, and where it is houſed; and do not remove the ſame, without certifying to ſuch officer, under his hand, his intention ſo to do, three days before. 1 *W.* *c.* 32. *f.* 3.

And no wool, wool fells, mortlings, ſhortlings, wool flocks, worſted, bay or woollen yarn, worſted yarn, cruels, or wool

ſlight-

ſlightly manufactured, ſhall be put on board any veſſel, to be carried coaſtwiſe, or from one port to another in *Great Britain* or *Ireland*, without notice given to the officers of the port, and bond given for the landing thereof, and a licence taken from ſuch officers for ſo doing; on pain of forfeiting the ſame, with the veſſel and furniture; and the bond to be ſued, if a certificate of landing the goods is not brought in ſix months. 12 *G.* 2. *c.* 21. *ſ.* 11.

And to prevent colluſive landing, none of the ſaid goods, carried coaſtwiſe, ſhall be landed but in preſence of the officers, and at the proper quays; on pain of forfeiting the ſame, or the value, and 3 *s.* for every pound, to be paid by the owner. *id. ſ.* 13.

And all cocquets, for carrying wool from any port, ſhall be written on paper, and not parchment (to prevent the eraſing), and ſigned by three officers of the port; and all certificates of landing the ſame again in any other port, ſhall be ſigned in like manner: And all ſuch wool, both at ſhipping and landing, ſhall be weighed in the preſence of the ſaid officers; and the weight, marks, and number of ſuch wool ſo ſhipped and landed, ſhall be expreſſed both in the cocquet and certificate. 1 *W. c.* 32. *ſ.* 4.

And a regiſter ſhall be kept at the cuſtom houſe, *London*, of all the wool ſent from port to port in this kingdom, the weight, number, ſhip, maſter's name, owner's name, and to whom conſigned; for the uſe of the commiſſioners. 1 *W. c.* 32. *ſ.* 11.

And officers not obſerving the directions of this act, ſhall be deemed abettors of the exportation. *id. ſ.* 5.

In Kent and Suſſex: Every owner of wool, within ten miles of the ſea, ſhall give an account in writing, in three days after ſhearing, of his number of fleeces, and where lodged, to the next officer of the cuſtoms; and the like notice, before he remove any part thereof, of the number of fleeces and weight, and the name and abode of the perſon to whom it is diſpoſed, and the place whither intended to be carried; and ſhall take a certificate from the officer who firſt entered the ſame (paying 6 *d.*); on pain of forfeiting the wool, and alſo 3*s.* for every pound thereof, as if it had been actually exported. 9 & 10 *W. c.* 40. *ſ.* 3.—And no perſon within 15 miles of the ſea, in the ſaid counties, ſhall buy any wool, before he enters into bond to the king, with ſureties, that all the wool he ſhall buy, ſhall not be ſold by him to any perſon within 15 miles of the ſea, and if any wool be found carrying towards the ſea ſide, in the ſaid counties, unleſs it be firſt entred, and ſecurity given, it ſhall be

be forfeited, and the offender ſhall alſo forfeit 3 *s.* a pound. *id. ſ.* 4.—And no wool removed from the place where it was firſt lodged after ſhearing, within ten miles, ſhall be lodged, after the firſt removing, within 15 miles of the ſea in the ſaid counties; on pain of forfeiting all ſuch wool, if found; but if carried away, the owner ſhall forfeit 3 *s.* a pound. *id. ſ.* 5.—And every perſon that ſhall lay any wool within 15 miles of the ſea, and not entered as aforeſaid, all ſuch wool ſhall be ſeized and forfeited; and every perſon claiming the ſame (upon ſuch ſeizure) ſhall give ſurety in the exchequer, if he ſhall be caſt upon trial, to pay treble coſts, over and above the ſaid penalties. *id. ſ.* 6.

And no wool, wool fells, mortlings, ſhortlings, woollen yarn, wool flocks, fuller's earth, or ſcouring clay, ſhall be loaden on any horſe or carriage, or carried by land, within 15 miles of the coaſt, but between ſun riſing and ſun ſetting; on pain of forfeiting the ſame, and the horſes and carriages. *id. ſ.* 8.

Hundred to forfeit treble value.

11. And the hundred next adjoining to the ſea coaſts, out of or through which the ſame is carried or exported, ſhall forfeit 20 *l.* if the wool ſo carried out or exported ſhall be under the value of 10 *l.* but if of greater value, then treble the value thereof, with treble coſts; to be ſued for within a year. 7 & 8 *W. c.* 28. *ſ.* 8, 12.

The execution to be againſt any two of the inhabitants; and the ſeſſions ſhall make an aſſeſſment to reimburſe them, as in caſes of robbery. *ſ.* 9.

And any perſon compounding with the hundred for leſs, ſhall be impriſoned five years, and another perſon may proſecute. *ſ.* 13.

And the owner of the wool, or of any other the commodities aforeſaid, and every perſon aiding in carrying or exporting any of them out of the kingdom, ſhall anſwer ſuch treble value to the ſaid inhabitants, as alſo treble coſts; to be recovered by them in the name of the clerk of the peace, in any court of record at *Weſtminſter*. *ſ.* 10.

Riotous exportation.

12. By the 19 *G.* 2. *c.* 34. which by the 4 *G.* 3. *c.* 12. hath continuance to *Sept.* 29. 1771, *&c.* If any perſons armed, to the number of three or more, ſhall be aſſembled to aſſiſt in the illegal exportation of wool, or in the carrying off wool in order to exportation, or in reſcuing the ſame after ſeizure, or in reſcuing an offender herein, or preventing his being apprehended, or ſhall be aiding in any the premiſſes; or if any perſon ſhall have his face diſguiſed when paſſing with ſuch wool, or ſhall forcibly hinder or aſſault any officer in ſeizing the ſame, or dangerouſly wound any

any ſuch in attempting to go on board any veſſel, or ſhoot at or wound him when on board in execution of his office,—he ſhall be guilty of felony without benefit of clergy.

And if information, ſubſcribed, and on oath, be made hereof before a juſtice of the peace; he ſhall forthwith certify the ſame under hand and ſeal, and return the information to a ſecretary of ſtate, who ſhall lay the ſame before the king in council; and the king thereon may make order, in two ſucceſſive gazettes for the offender to ſurrender in 40 days to ſome juſtice of the peace (who ſhall thereon commit him): The ſame order to be ſent to the ſheriff; who ſhall in 14 days after receipt, cauſe it to be proclaimed, between the hours of 10 and 12, on the market-days, in two market towns, near to the place where the offence is committed, and a copy thereof to be affixed in ſome publick place in ſuch market towns. And if he ſhall no ſurrender, or eſcape after ſurrender, he ſhall likewiſe be guilty of felony without benefit of clergy.

But if he ſhall be taken before the time of ſurrender, he ſhall have a legal trial.

And if after the time of ſurrender, any perſon ſhall knowingly harbour him, he ſhall, on proſecution within a year, be guilty of felony, and be tranſported for ſeven years.

And if any officer in ſeizing the wool, or endeavouring to apprehend offenders, be beaten or killed, or the wool ſeized be reſcued, the hundred ſhall anſwer damages, as in caſes of robbery, not exceeding 40 *l.* for any beating, nor 200 *l.* for loſs of the wool; and ſhall pay 100 *l.* to the executor or adminiſtrator of ſuch perſon killed: Provided that notice of the offence be given to, or left at the houſe of ſome conſtable near the place, as ſpeedily as conveniently may be, deſcribing the offender, time, and place; and alſo in four days, to two inhabitants near; and in eight days, oath be made before a juſtice, whether he knows the offender, and if he does, entring into recognizance to proſecute; and in 20 days, like notice be given in the gazette; and 100 *l.* bond, with two ſureties, be given before the ſheriff, to the high conſtable, to pay coſts, if caſt; and provided, that an offender is not convicted in ſix months; and that the action be commenced within a year.

And if any perſon ſhall be maimed or grievouſly wounded in apprehending ſuch offender, he ſhall have moreover a further reward of 50 *l.* to be paid by the commiſſioners of the cuſtoms or exciſe.

And the executors or adminiſtrators of ſuch perſon killed, ſhall have from them 100 *l.* over and above what is paid by the hundred.

And

And if any perſon ſhall take an offender advertiſed, and not ſurrendred, and bring him before a juſtice of the king's bench, or juſtice of the peace for *London* or *Middleſex*, (to be by them committed to *Newgate*), he ſhall receive 500 *l.* reward, from the ſaid commiſſioners.

And an offender, not outlawed, apprehending an outlawed accomplice, ſhall have a pardon, and alſo the reward.

And an offender, not outlawed, convicting two accomplices not outlawed, ſhall have a pardon, and 50 *l.* for each.

Exporting wool out of Ireland in particular.

13. By the 26 *G.* 2. *c.* 11. It ſhall be lawful for any perſon, to export from any port in *Ireland*, any wool, or woollen or bay yarn, wool fells, ſhortlings, mortlings, wool flocks, and worſted yarn, to any port in *Great Britain*.

But no perſon ſhall export, or load, or ſhip, with intent to export, any wool, wool fells, ſhortlings, mortlings, or any woollen cloth, or manufacture, out of *Ireland*, except it be into *Great Britain*; on pain of forfeiting the ſame, and the ſhip, and alſo 500 *l.* and the maſter, mariners, and others aſſiſting, 40 *l.* 10 & 11 *W.* *c.* 10 *ſ.* 1, 2.

But the firſt three perſons, not being owners, or part owners, who have been aiding in exporting the ſame, that ſhall inform any juſtice of the peace, whereby the penalties may be recovered; ſhall be freed from all penalties for the ſame. 3 *G.* *c.* 21. *ſ.* 5.

And bond of double value of the goods ſhall be given to the officers of the cuſtoms, for every ſhip exporting the ſame, that they ſhall be landed in *Great Britain*. 10 & 11 *W.* *c.* 20. *ſ.* 5.

And no wool, or any of the ſaid goods, ſhall be brought into *Great Britain* or *Ireland*, but in ſhips of the built of *Great Britain* from *Ireland*; on pain of forfeiting the goods, or the value, together with the ſhip and furniture. 12 *G.* 2. *c.* 21. *ſ.* 6.

And to prevent colluſive landing, none of the ſaid goods imported from *Ireland*, ſhall be landed but in preſence of the officers, and at the proper quays; on pain of forfeiting the ſame, or the value, and 3 *s.* for every pound, to be paid by the owner. *id.* *ſ.* 13.

And the commiſſioners of the cuſtoms in *Ireland*, ſhall every ſix months tranſmit to the commiſſioners of the cuſtoms in *England*, an account of wool exported, from whence, the quantity and weight, by whom, in what ſhip, where conſigned, names of the perſons in *England* ſigning cer-

certificates of landing the ſame, with the dates of ſuch certificates, and where landed, and the quantity and weight contained in the certificates: Which certificates ſhall not be obliterated or interlined, and ſhall be written on paper, and not parchment. 7 & 8 *W.* *c.* 28. *ſ.* 6, 7.

And a regiſter ſhall be kept at the cuſtom-houſe, *London*, of all the wool imported from *Ireland*, the weight, number, ſhip, maſter's name, owner's name, and to whom conſigned; for the uſe of the commiſſioners. 1 *W.* *c.* 32. *ſ.* 11.

Guard ſhips.

14. The commiſſioners of the admiralty ſhall appoint 2 fifth rate ſhips, 2 ſixth rates, and 8 armed ſloops, conſtantly to cruiſe on the coaſts, particularly between the north of *Ireland* and *Scotland*, with orders to ſeize all ſhips, exporting wool to foreign parts. And all wool, and veſſels ſo ſeized, ſhall be forfeited, and the wool lodged in the king's warehouſe till condemned; and then the ſame after 21 days (together with the veſſels ſo condemned) ſhall be ſold by inch of candle, notice being firſt given at the cuſtom-houſe of the port where lodged, and on the *Royal Exchange* at *London*; one fourth of the produce to the commander, one fourth to the officers, one fourth to the mariners, and one fourth to the king (charges of proſecution and condemnation being firſt paid out of the king's part.) And the commander neglecting his duty herein, ſhall forfeit his wages, and office, and be impriſoned ſix months. 10 & 11 *W.* *c.* 10. *ſ.* 16, 17, 18.

And they ſhall alſo appoint 3 ſixth rate ſhips, and 8 or more armed ſloops, to cruiſe on the *Britiſh* and *Iriſh* coaſts, with orders for ſeizing all ſhips wherein any woollen manufactures are exported from *Ireland*; which ſhips and goods ſhall be forfeited, one fourth to the commander, one fourth to the officers, one fourth to the mariners, and one fourth to the king, the charges being firſt paid out of the king's part. But if the ſeizure was at the information of any perſon, ſuch informer ſhall have a fifth part, and the reſidue be diſtributed as above. 5 *G.* 2. *c.* 21. *ſ.* 1, 2, 3.

Exporting wool or woollen manufactures from America.

15. No wool, or woollen manufactures, ſhall be exported from any of the *American* colonies, on the like pain as from *Ireland*. 10 & 11 *W.* *c.* 10. *ſ.* 19.

Inſuring wool to be landed in foreign parts.

16. Perſons inſuring wool, and other the ſaid goods, to be landed in foreign parts, and alſo perſons agreeing to pay the money for ſuch inſuring, ſhall forfeit 500 *l.* to him who ſhall ſue in any court of record at *Weſtminſter*, in the name of an officer of the cuſtoms, exciſe, or ſalt, or of the attorney general. 12 *G.* 2. *c.* 21. *ſ.* 29, 30, 32.

And

And the inſurer informing ſhall be diſcharged of his own penalty; and ſhall have the forfeiture of the other party; and ſhall alſo keep the inſurance money paid to him: And the inſured informing ſhall receive back his inſurance money if paid; and if not paid, ſhall be indemnified from paying it; and ſhall be diſcharged of his own penalty; and ſhall have the forfeiture of the other party. *id. ſ.* 31.

And all inſurances of wool, and woollen goods, and other the goods before mentioned, ſhall be void. *id ſ.* 33.

IV. Concerning cards for the manufacturing of wool.

No foreign wool cards, or card wyre, ſhall be imported, or uſed; nor ſhall any wyre be taken out of old cards, and put into new leather and boards, nor any cards made thereof be put to ſale; on pain of forfeiting the ſame, or the value thereof, if the ſame be not ſeized, half to the king, and half to him that ſhall ſeize or ſue for the ſame in any court of record at *Weſtminſter*, or within the county, city or town corporate, where the offence ſhall be committed. 13 & 14 *C.* 2. *c.* 19.

V. Concerning the deceitful working of woollen cloth.

1. No perſon ſhall put any hair, flocks, thrums, or yarn of lamb's wool, or other deceivable thing in any woollen cloth, on pain of forfeiting the ſame; and the perſon procuring ſuch deceitful thing for that purpoſe, ſhall likewiſe forfeit the ſame; half to the finder, and half to the poor. 43 *El. c.* 10. *ſ.* 2, 12.

2. But in the caſe of *broad* cloth, by the 21 *J. c.* 18. the aboveſaid penalty is mitigated; which enacteth, that no perſon ſhall put any flocks, noiles, thrums, hair, or other deceivable thing, in any broad cloth; on pain of 5 *l.* (and no greater penalty) to the poor. *ſ.* 3.

And for the better diſcovery thereof, two juſtices, on information of any one of his knowledge or ſuſpicion of ſuch offence, may grant their warrant to call before them any perſon that ſhall in their diſcretions be thought fit to diſcover any ſuch offence, and examine them on oath; and if it be found, by two witneſſes, or confeſſion, they ſhall certify the ſame under their hands and ſeals to the churchwardens and overſeers; who ſhall, upon ſuch certificate, and by warrant of ſuch juſtices, levy the penalty by diſtreſs:

in

in default of diſtreſs, to be committed to gaol till paid. *ſ.* 4, 5.

And the ſearchers ſhall ſet upon the ſame the word [*faulty*] and no perſon ſhall ſearch the ſame again, on pain of 5 *l.* to the party grieved; who ſhall ſue for the ſame by bill, plaint, or information, at the ſeſſions. 21 *J.* *c.* 18. *ſ.* 7.

3. No clothier ſhall uſe, or cauſe to be uſed, any ends of yarn, wefts, or other refuſe of cloths, druggets, or other woollen goods, or goods mixed with wool (flocks and pinions only excepted,) by working the ſame up again into any ſort of goods; on pain of 5 *l.* on conviction before two juſtices on information on oath, in three months after the offence; to be levied by diſtreſs; half to the informer, and half to the poor: for want of diſtreſs, to be committed to gaol not exceeding three months, or until ſatisfaction be made. But perſons aggrieved may appeal to the next ſeſſions, giving ſix days notice in writing; who may order coſts and damages, and levy the ſame by diſtreſs, by their order or warrant; for want of diſtreſs, may commit the party to gaol, or to the houſe of correction not exceeding three kalendar months; or until ſatisfaction ſhall be made. And no certiorari ſhall lie on this act. 13 *G.* *c.* 23. *ſ.* 3, 4, 6.

And if any perſon ſhall be found collecting, buying, or carrying, in any bag or other convenience, any ſuch ends of yarn, wefts, thrums, ſhort yarn, or other refuſe of cloth, drugget, or other woollen goods, or goods mixed with wool (flocks and pinions only excepted); the conſtable may, by warrant of one juſtice, ſearch ſuch perſon, bag, or convenience, and if any the ſame be found, he ſhall carry the offender before a juſtice of the peace, and on conviction before him, by confeſſion, or oath of one witneſs, he ſhall be deemed an incorrigible rogue, and liable to be puniſhed as ſuch. 23 *G.* *c.* 23. *ſ.* 8. 17 *G.* 2. *c.* 5. *ſ.* 4.

VI. Concerning the fulling of cloth.

Every fuller, in his craft and occupation of fulling, rowing, or tayſeling of cloth, ſhall uſe tayſels, and no cards, deceitfully impairing the ſaid cloth, on pain to yield to the party grieved his double damage: And every juſtice of the peace, mayor, maſter, warden, bailiff, portreve, conſtable of hundred, and ſteward of leet in their reſpective liberties, may hear and determine the ſame, and commit the offender to the next gaol till payment. And alſo any perſon not grieved may make information to any ſuch juſtice, mayor, maſter,

maſter, warden, bailiff, portreve, or ſteward; in which caſe the offender ſhall forfeit to the king, or to ſuch perſon as ſhall be intitled to fines or amercements within their juriſdiction, 3 *s.* 4 *d.* and they may make proceſs againſt the party in like manner as juſtices of the peace may do for ſureties of the peace, without any fee to be taken for the execution of their offices in this behalf. 4 *Ed.* 4. *c.* 1. *ſ.* 6.

And no cloth, not fulled, ſhall be exported; on pain of forfeiting the ſame, half to the king, and half to him that will ſue. 7 *Ed.* 4. *c.* 3.

The laws for preventing the exportation of fuller's earth, have been treated of under the article concerning the exportation of wool.

VII. Concerning the ſearching of cloth, and therein of the length, breadth, and weight thereof.

Yard and inch.

1. For the meaſuring of cloth, the ſtatutes do generally provide that the yard ſhall conſiſt of a ſtandard yard, and the breadth of a man's thumb beſides; or 37 inches in the whole.

Overſeers of cloth.

2. In every pariſh and hamlet where cloths are made, two juſtices (and in corporations, the mayor, togther with one juſtice of the ſhire next adjoining) ſhall once a year, or oftner, call before them, by precept or otherwiſe, 2, 4, 6, 8, or more, of the moſt honeſt, diſcreet, and able men of ſuch place, and appoint them overſeers for a year, or ſix months, or ſhorter time; and ſhall take them ſworn, and bound in recognizance of 40 *l.* each, to do their beſt endeavour by all lawful ways and means to ſee the ſtatutes obſerved relating to the regulation of cloth. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 9. 39 *El. c.* 20. *ſ.* 4. 43 *El. c.* 10. *ſ.* 7.

And any perſon, without reaſonable excuſe, refuſing to be overſeer, ſhall forfeit 5 *l.* half to the king, and half to ſuch juſtices; and to remain in ward of the ſheriff, till paid or ſecured. 39 *El. c.* 20. *ſ.* 5.

Overſeers to ſearch.

3. And the ſaid overſeers, or two of them, ſhall once a month at leaſt, or ſo often as need ſhall require, go into the houſes and rooms where the cloth ſhall be, and ſearch, and try the ſame, by water, weight, or any other way. 39 *El. c.* 20. *ſ.* 4.

And if any ſhall withhold cloth, or deny ſearch; he ſhall, on conviction thereof at the ſeſſions, forfeit for the firſt offence, 10 *l.* for the ſecond 20 *l.* for the third, being convicted by verdict and two witneſſes, he ſhall ſtand upon the pillory in the next market town. 39 *El. c.* 20. *ſ.* 5.

Which

Which said forfeitures shall be, one third to the overseers, one third to the king, and one third to the poor, as the sessions shall appoint. *id. s.* 9.

4. And by the 4 *J. c.* 2. (which is a judicious act, as are many in that king's reign) the several sorts of cloth shall be in length and breadth at the water, when thoroughly wet, and in weight when scoured, thicked, milled, and fully dried, as followeth : Length, breadth, and weight of cloth.

	Yards long	Quarters broad	Pounds weight
Long coloured broad cloth	30 to 34	6 ½	86
Long *Worcester*	30 to 33	7	78
Long plunkets, azures, blues, and long whites	29 to 32	6 ½	80
Sorting cloths with a blue selvedge	23 to 26	6	64
Fine short *Suffolks*	23 to 26	6 ½	64
Handiwarps	29 to 32	7	76
Broad plunkets, azures, blues, and other broad coloured	26 to 28	6 ½	68
Coloured short	23 to 25	6 ½	66
Half pieces of the same, called dozens, in proportion.			
Broad listed whites and reds	26 to 28	6 ½	64
Narrow listed whites	26 to 28	6 ½	61
Narrow listed reds	26 to 28	6 ½	60
Fine cloth with plain lists	29 to 32	6 ½	72
Cloths having stopt lists	30 to 33	7	78
Broads, called *Tauntons*, *Bridgewaters*, and *Dunsters*	12 to 13	7	30
Narrow ditto	24 to 25	4	30
Half cloth in proportion.			
Devonshire kerseys, called dozens	12 to 13		13
Check kerseys, straits, and plain greys	17 to 18	4	24
Ordinary penistones, or forest whites	12 to 13	5 ½	28
Sorting penistones	13 to 14	6 ½	35
Kerseys, called washers, or wash whites, half thicked	17 to 18		17
The same quarter thicked	18 to 19		17

Allowance in weight, for dying, dressing, rowing, and shearing, shall be made, in broad cloth four pounds, long cloth five pounds, and so in proportion. 4 *J. c.* 2. *s.* 13.

And no liquid shall be used for increase of weight, on pain of 40*s.* half to the king, and half to the buyer that shall sue. *id. s.* 12.

Maker's seal. 5. And the maker, before sale, shall set his seal of lead to the same, containing the length, and weight, to be tried by the water. 39 *El. c.* 20. *s.* 3.

Overseer's seal. 6. And the overseer shall fix a seal of lead to the cloth, containing the length and weight, with this word [searched]. 39 *El. c.* 20. *s.* 6.

And he shall, on the penalty of his recognizance, set his christian and surname upon the seal; and no seal otherwise shall be good. 21 *J. c.* 18. *s.* 11.

And cloth, sealed by the overseers, shall not be again tried but by the buyer. 4 *J. c.* 2. *s.* 22.

And if they shall find any *false* seal or mark, or the cloths to be stretched, they shall present the defaults at the next sessions. 39 *El. c.* 20. *s.* 5.

And if any person shall set any seal to cloth, or take any seal away without warrant; he shall, on conviction thereof at such sessions, for the first offence forfeit 10 *l.* for the second 20 *l.* and the pillory: The said forfeitures to be one third to the overseers, one third to the king, and one third to the poor, as the sessions shall appoint. 39 *El. c.* 20. *s.* 9.

Cloth sold unsealed. 7. And if any cloth be offered to be sold unsealed, the overseers shall seize it, and present the same to the justices at the next sessions. 39 *El. c.* 20. *s.* 4.

Cloths deficient in length, breadth, or weight. 8. And for every of the said cloths abovenamed, which shall be of less length than the seal doth import, shall be forfeited 6 *s.* 8 *d.* a yard, besides abatement of the price for what is wanting. 4 *J. c.* 2. *s.* 20.

For every yard of the said cloths sold, above the lengths, shall be forfeited 10 *s.* *id. s.* 17.

For the same wanting breadth throughout, shall be forfeited 20 *s.* wanting for half the length 10 *s.* under half 5 *s.* *id. s.* 19.

And for every pound wanting above two pounds in weight shall be forfeited 10 *s.* *id. s.* 18.

Distribution of forfeitures. 9. And by the 21 *J. c.* 18. *s.* 12. All penalties and forfeitures whatsoever, for want of length, breadth, and weight, by this or any former act, shall be distributed into three equal parts; one third to the overseers and searchers finding and certifying the default, to be recovered by them in sessions, by action of debt, bill, plaint, or information, and two thirds to the poor, by distress.

Measure and weight of other cloths. 10. Measure and weight of cloths by former acts, not altered by the 4 *J. c.* 2. seem to be as follows:

By the 3 *J. c.* 16. Ordinary kersey shall not exceed 24 yards in length, and shall weigh one pound and three ounces a yard: Sorting kersey shall not exceed 24 yards in length,

length, and ſhall weigh one pound three ounces and half a yard: On pain of 5 *s.* for every yard above, and 2 *s.* for every pound wanting (to be levied and diſtributed in like manner.)

By the 3 *J. c.* 17. No penalty ſhall be, for want of a ſeal on *Welſh* cottons; and they ſhall not be ſearched or tried but by the buyer.

By the 8 *El. c.* 12. Frizes and rugs ſhall be from 35 to 37 yards long, three quarters of a yard within a nail broad, and 44 pounds weight; (On pain of 20 *s.* for offending in length or breadth, by 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 25. And for every pound wanting above four pounds, 5 *s.* by 4 & 5 *P. & M. c.* 5. *ſ.* 15.)

Moreover, by the 7 *J. c.* 16. Cogware, Kendals, coarſe Cottons, and Carptmeals, made in *Cumberland*, *Weſtmorland*, or in *Carptmeale*, *Hawkeſhed*, and *Broughton* in *Lancaſhire*, whereof the dozen ſhall not exceed the price of 13 *s.* 4 *d.* ſhall not be ſearched nor ſealed, but may be made in ſuch ſort as may beſt pleaſe the buyer.

VIII. Concerning the dying of cloth.

1. For the encouragement of dreſſing and dying of cloth, no perſon ſhall export any white woollen broad cloth, until he have paid duty of 5 *s.* for every ſuch cloth; on pain of forfeiting the ſame, or the value thereof, half to the king, and half to him that ſhall ſeize, inform or ſue. 6 *An. c.* 8.

2. No wool ſhall be boiled with galls, bark of trees, or ſaw duſt, to be converted into broad cloth or kerſey; on pain of forfeiting the ſame, or the value thereof, half to the king, and half to him that ſhall ſue. 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 52.

3. No perſon ſhall dye any wool to be converted into cloth, called ruſſets, muſters, marbles, greys, roys, and ſuch like colours, or into hats or caps; unleſs it be perfectly woaded, boiled, and maddered: on pain of 40 *s.* for ſo much thereof as will ſerve for the making of every ſuch cloth; half to the king, and half to the overſeer who ſhall diſcover and ſue in any court of record, or before the juſtices of peace. And if the overſeer will not ſue in half a year, then the ſaid moiety to any other perſon who will ſue in another half year. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 5, 10, 11.

4. No perſon ſhall dye with braſel, to make a falſe colour in cloth or wool, hats, or caps; on pain of 20 *s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 5.

5. No perſon ſhall dye any woollen cloths, as browns, blues, pewks, tawnies, or violets; except the ſame be perfectly boiled, greined, or maddered upon the woad, and ſhot with good cork or orchal; on pain of 20 *s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 4.

6. By the 13 *G. c.* 24. If any perſon ſhall dye any bays, or other woollen goods, for mather blacks, and not being dyed throughout with woad, indico, and mather only; he ſhall (being convicted thereof in 40 days) forfeit for every long *Bocking* bays containing 70 yards 44 *s.* *Colcheſter* or ſhort bays of 35 yards 22 *s.* and ſo in proportion. If the penalty is above 5 *l* it ſhall be recovered in the courts at *Weſtminſter*; if under 5 *l.* before two juſtices (not intereſted) by oath of one witneſs, half to the informer, and half to the company of dyers, if in *London*; if out of *London*, the whole to the informer and proſecutor. And if the penalties under 5 *l.* are not paid in 20 days after conviction, then to be levied by the conſtable by warrant of ſuch juſtices by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction, to be kept to hard labour not exceeding three months. But perſons aggrieved by the juſtices may appeal to the next ſeſſions, who may allow coſts. And the ſaid mathered blacks ſhall be marked with a red roſe and a blue roſe; and if any perſon counterfeit the ſame, he ſhall forfeit 4 *l.* in like manner.

And if any perſon ſhall dye for *woaded* black any woollen goods, the ſame not being woaded, he ſhall forfeit in like manner for every cloth of 44 yards 40 *s.* bays of 70 yards 30 *s.* *Colcheſter* or ſhort bays of 35 yards 12 *s.* perpetuana or ſtuffs 4 *s.* and ſo in proportion. And the ſaid woaded blacks ſhall be marked with a blue roſe only: And if any perſon ſhall counterfeit the ſame, he ſhall forfeit 4 *l.* in like manner.

And if any perſon ſhall uſe logwood in dying blue, he ſhall forfeit in like manner for cloth of 44 yards 40 *s.* *Bocking* bays of 70 yards 22 *s.* *Colcheſter* or ſhort bays of 35 yards 12 *s.* perpetuana or ſtuff of 24 yards 4 *s.* and for other woollen goods in proportion.

And the dyers within *London* ſhall be ſubject to the inſpection of the company; ——out of the limits thereof, the quarter ſeſſions may appoint ſearchers; who may (with the conſtable's aſſiſtance) ſearch in the day time; and perſons refuſing ſuch ſearch ſhall forfeit 10 *l.* in like manner.

IX. Con-

IX. Concerning tenters, and the ſtretching of cloth.

1. No perſon ſhall have or uſe any tenter, with a lower bar, pin, ring, or other engine or device; any wrinch, ring head, growm, rope, or other engine, to ſtretch any rough and unwrought woollen cloth: on pain of 20 *l.* half to the king, and half to him that ſhall ſue. 43 *El. c.* 10. *ſ.* 2. Tenter.

2. No perſon ſhall ſtretch (or ſell the ſame ſtretched) any wrought woollen broad cloth above one yard in length, and half a quarter in breadth; or half cloth above half a yard in length, and half a quarter in breadth; or kerſey, cotton, dozen, peniſtone, frize, rugg, above half a yard in length, and one nail in breadth; on pain of forfeiting the ſame, half to the overſeer, or informer, and half to the poor. 43 *El. c.* 10. *ſ.* 3, 12. Stretching.

3. If any perſon ſhall felonioufly cut and take, ſteal, or carry away, any cloth or other woollen manufacture from the rack or tenter in the night time, he ſhall be guilty of felony without benefit of clergy. 22 *C.* 2. *c.* 5. *ſ.* 3. Stealing off tenters.

But becauſe it is often difficult to prove the owner's property in the cloth, therefore by the 15 *G.* 2. *c.* 27. it is enacted, that if any cloth or woollen goods on the tenters, or woollen yarn or wool left out to dry, ſhall be ſtolen in the night, any juſtice on complaint made in ten days by the owner, may iſſue his warrant to any peace officer, in the day time to enter into, and ſearch the houſes, out houſes, yards, gardens, or other places belonging to the houſes of every perſon whom ſuch owner ſhall upon his oath declare to ſuch juſtice he ſuſpects to have ſtolen, taken away, or received the ſame; and if the officer ſhall find any ſuch goods which from the oath of ſuch perſon he ſhall have reaſon to ſuſpect to have been ſtolen, he ſhall apprehend the perſon in whoſe cuſtody or poſſeſſion the ſame ſhall be found, and carry him before a juſtice; and if he ſhall not give a ſatisfactory account how he came by the ſame, or in a convenient time to be ſet by the juſtice produce the party of whom he had the ſame, or a credible witneſs to depoſe on oath his property therein, he ſhall be convicted of ſtealing ſuch goods; and ſhall for the firſt offence forfeit to the owner treble value, and in default of payment thereof in the time appointed by ſuch juſtice, he ſhall iſſue his warrant to levy the ſame by diſtreſs and ſale; and in default of diſtreſs, ſhall commit him to the common gaol where he ſhall be apprehended, for three months, or till paid; for the

ſecond offence treble value, and ſix months impriſonment; for the third offence, ſuch juſtice ſhall commit him to the aſſizes, and if he ſhall be there convicted in like manner, he ſhall be guilty of felony, and tranſported for ſeven years. But perſons aggrieved (except on the third conviction) may appeal to the next general quarter ſeſſions, whoſe order therein ſhall be final. But nevertheleſs, this ſhall not alter any former law in force, for ſtealing or receiving ſuch cloth, or goods, except where the proof is laid on the offender.

X. Concerning the dreſſing of cloth.

1. No woollen cloth ſhall be exported, till it be barbed, rowed, and ſhorn; on pain of forfeiting the ſame, half to the king, and half to him that will ſue. 3 *H.* 7. *c.* 11.

2. No perſon ſhall uſe iron cards, or pickards, in rowing of cloth; on pain of forfeiting the cards, and 20 *s.* half to the king, and half to the overſeer who ſhall diſcover and ſue in any court of record, or before the juſtices of the peace. And if the overſeer will not ſue in half a year, then the ſaid moiety to any other perſon who will ſue in another half year. 3 & 4 *Ed.* 6. *c.* 2 *ſ.* 7, 10, 11.

3. No perſon ſhall put any flocks, chalk, flour, or ſtarch, or other deceivable thing on cloth; on pain of 40 *s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 6.

4. There ſhall be no rowing, or raiſing of cloth, with oil, greaſe, or any liquid, but only on the edge of the ſhears with ſemet or oils; on pain of 13 *s.* 4 *d.* half to the king, and half to the buyer that ſhall ſue. 4 *J.* *c.* 2. *ſ.* 10.

5. There ſhall be no cutting of wool from the backſides of cloth, but with ſhears only; on the like pain of 13 *s.* 4 *d.* 4 *J.* *c.* 2. *ſ.* 11.

6. No liquid ſhall be uſed on the ſide of the cloth, to make it look better than the midſt; on like pain of 13 *s.* 4 *d.* 4 *J.* *c.* 2. *ſ.* 12.

7. The ſides ſhall not be raiſed, fulled, rowed, or ſhorn, better than the middle; on like pain of 13 *s.* 4 *d.* 4 *J.* *c.* 2. *ſ.* 10.

8. No perſon ſhall preſs cloth with a hot preſs; on pain of forfeiting the ſame, or the value, half to the king, and half to him that ſhall ſue. 5 & 6. *Ed.* 6. *c.* 6. *ſ.* 52.

9. And preſſing of cloth with hot boards ſhall be puniſhed with like forfeiture, as preſſing it with a hot preſs. 21 *J.* *c.* 18. *ſ.* 11.

XI. Con-

XI. Concerning mixed or medley broad cloth in particular.

It is provided by the 10 *An. c.* 16. and 1 *G. ſt.* 2. *c.* 15. that nothing therein ſhall extend to any cloth made in *Yorkſhire*; By which acts it is alſo further provided as follows: Mixed or medley broad cloth.

The fulling miller ſhall take an oath before a juſtice dwelling near ſuch mill, that he will well and truly perform the meaſuring all mixed or medley broad cloth fulled at his mill. Fulling miller to meaſure.

In order to which, he ſhall have a table 12 foot long, and three foot broad, whereon the cloth ſhall be doubled and laid plain, with the length of a yard marked thereon: on which he ſhall meaſure the ſame, when fulled and wet; and ſhall fix and rivet at the head end thereof a ſeal of lead (to be furniſhed by the clothier), which ſhall be marked with a crown on the rivet: on which ſeal he ſhall ſtamp his name, and the length and breadth of the cloth; for which he ſhall have one penny. And ſeal.

He ſhall alſo enter in a book, the marks, ſort, number, length and breadth thereof. And enter the ſame.

And if he ſhall refuſe to take ſuch oath, or to fix ſuch ſeal, or to make ſuch entry; he ſhall, on conviction in 40 days, before one juſtice not intereſted, on oath of one witneſs, forfeit 20 *l.* to the poor of the pariſh or place, charges of conviction firſt deducted. If not paid in 30 days after conviction, to be levied by diſtreſs. For want of diſtreſs, to be committed to gaol or houſe of correction, to be kept to hard labour for three kalendar months. Perſons aggrieved may appeal to the next ſeſſions, who may allow coſts.

And if any perſon ſhall take off, deface, counterfeit, or alter, ſuch ſeal, or add any other; he ſhall in like manner forfeit 20 *l.* Counterfeiting the ſeal.

And no perſon ſhall expoſe to ſale any mixed or medley broad cloth, before it be ſo ſealed; on pain of forfeiting one ſixth part of the cloth, to the poor in like manner: or, if it is in *London*, to the benefit of *Chriſt*'s hoſpital. Selling before ſealed.

If the buyer is not ſatisfied with the meaſure, he may have it meaſured again in the water, in eight days after delivery, giving two days notice to the ſeller or his factor: In which caſe, each party ſhall chuſe a meaſurer; and if thoſe two diſagree, they may chuſe a third: and if he ſhall refuſe, it ſhall be meaſured, if in *London* by the keeper of *Black-* Buyer may meaſure again.

Blackwell-hall, who ſhall be ſworn before a juſtice to meaſure it truly: if not in *London*, then if the two meaſurers diſagree, or appoint not a third perſon, the chief magiſtrate ſhall appoint and ſwear one.

But if the ſeller doth not then appear, or doth not then appoint a meaſurer, the keeper of *Blackwell-hall* ſhall proceed to meaſure it.

And the meaſurer ſhall be paid by the the buyer 6 *d.* for each piece.

And he ſhall make a certificate of the true meaſure thereof.

And if on ſuch his meaſuring there appear a leſs quantity in length, or in the greateſt part of the breadth, than is mentioned in the ſeal, the owner or ſeller ſhall forfeit the ſixth part of the value of ſuch cloth, to be paid by the buyer, and deducted out of the price, on the meaſurer's making ſuch certificate, and making ſuch oath thereof before a juſtice, of which the juſtice ſhall give him a certificate. The ſame to be repaid by the fulling miller.

And the ſaid certificate ſhall in ten days be filed with the clerk of the peace, for which he ſhall have 1 *s.* which certificate ſo filed, ſhall be a ſufficient conviction. And an atteſted copy of ſuch certificate (for which the clerk of the peace ſhall likewiſe have 1*s.*) ſhall be a ſufficient authority to the owner or ſeller, to demand of the milman the forfeitures deducted out of the price. Which if he ſhall refuſe to pay, it ſhall be levied by diſtreſs, by warrant of one juſtice; and for want of diſtreſs, to be committed to gaol or houſe of correction for three months.

Tenters. And by the 13 *G. c.* 23. Every owner of tenters for mixed or medley broad cloth, in the counties of *Glouceſter*, *Wilts*, and *Somerſet*, ſhall meaſure the tenter, and mark in figures the length of yards, beginning at number I, and ſo continuing to the end, upon the top bar, and on the foreſide thereof; on pain of 5 *l.* on conviction before two juſtices, on information on oath, in three months after the offence; to be levied by diſtreſs, half to the informer, and half to the poor: for want of diſtreſs, to be committed to gaol not exceeding three months, or until ſatisfaction be made.

Inſpectors. And the juſtices of the ſaid counties, at *Eaſter* ſeſſions yearly, ſhall chuſe inſpectors; who, before they enter upon their office, ſhall take this oath; *I* A. B. *do ſwear, that I will well and truly execute the office of an inſpector of mixed or medley woollen broad cloth within this county, according to the laws*

laws and ſtatutes of this realm, and according to the beſt of my ſkill and knowledge: So help me God.

And they ſhall inſpect the mills, ſhops, houſes, and tenter grounds of perſons concerned in milling and manufacturing mixed or medley woollen broad cloth; and ſhall meaſure the cloth on the tenter; and ſuch inſpector ſhall ſtamp his name on a lead ſeal, to be furniſhed by the maker of the cloth, and affix the ſame on the head end of ſuch cloth, and ſhall regiſter in a book the clothier's, milman's, or other perſon's name, and the number, length, and breadth, of every ſuch cloth; and ſhall at every quarter ſeſſions give in a copy of ſuch regiſter, with an account of forfeitures levied.

The milman ſending home ſuch cloth before inſpected, ſhall forfeit 40 *s.* in like manner.

Perſons refuſing entrance to the inſpector, ſhall forfeit 10 *l.* in like manner.

And the inſpector acting againſt his oath, ſhall forfeit 20 *l.* in like manner.

And the ſaid juſtices ſhall allow a ſalary to each inſpector, not exceeding 30 *l.* a year: for the raiſing of which, every maker ſhall pay to the inſpector 2 *d.* for every ſuch cloth, before they are ſent from the mill; who ſhall pay the ſame every three months or oftner, to the county treaſurer, to be applied by the ſeſſions towards ſuch ſalaries.

XII. Concerning the Yorkſhire *manufacture in particular.*

Narrow woollen cloth.

1. By the 11 *G.* 2. *c.* 28. The juſtices at the *Eaſter* ſeſſions yearly for the *Weſt Riding* of the county of *York*, ſhall appoint ſearchers, ſuch as have ſerved apprenticeſhips to the trade of making narrow cloth, or have exerciſed ſuch trade three years; and appoint them ſalaries: Who ſhall be ſworn before a juſtice, well and truly to execute the office of ſearching ſuch narrow woollen cloth. And in caſe of the death or ſickneſs or other diſability of a ſearcher; one juſtice, living near, may appoint another till the next ſeſſions, to be there confirmed, or another appointed. 11 *G.* 2. *c.* 28. *ſ.* 3, 4.

Which ſaid cloth may be made of what length and breadth the maker ſhall think fit. *ſ.* 13.

And he ſhall weave or ſet in the head of every piece, the firſt letters of his name; on pain, on conviction in one month, of forfeiting 20 *s.* *ſ.* 1.

And

And the ſame ſhall be meaſured when wet at the mill, both by the milman and the ſearcher, who ſhall meaſure it down the middle for the length, and within the liſts for the breadth. *ſ.* 1.

And the milman ſhall rivet at one end a ſeal of lead, to be furniſhed by the clothier, and ſhall ſtamp his name thereon at length, and the length and breadth in figures: And the ſearcher ſhall alſo affix a ſeal of lead at the other end, with his name, with the length and breadth in like manner. *ſ.* 1.

And they both ſhall keep books, wherein they ſhall enter the day and year when milled, the name and place of abode of the owner, and the length and breadth; and ſhall ſuffer the buyer to inſpect the ſame. *ſ.* 1.

The miller, or ſearcher offending herein, ſhall, on conviction in eight days after the cloth is removed from the mill, forfeit 5 *l.* *ſ.* 1, 2.

And if any perſon ſhall counterfeit the ſeal or mark, he ſhall (on conviction in one month) forfeit 40 *s.* *ſ.* 7.

And a ſum not exceeding 3 *d.* for each cloth, ſhall be paid by the owner before it is carried from the mill, to ſuch perſon as the juſtices at *Eaſter* ſeſſions ſhall appoint, to pay the ſearchers ſalaries, and other expences of the act: And the perſon ſo appointed may detain the cloth at the mill till paid; and if not paid in eight days after demand, ſuch perſon may ſell the ſame, and detain the money, rendering the overplus on demand. *ſ.* 8, 9.

And the owner ſhall meaſure the cloth when brought from the mill, before it is ſet on the tenter; and if it is leſs than the ſtamp, or by lying wet is become leſs, he ſhall carry it to the milman and ſearcher to be reſtamped, on pain of 5 *s.* on conviction in one month after the offence. *ſ.* 5.

The owner may ſtretch the ſame one inch in a yard in length, and two inches in every three quarters in breadth, and ſo in proportion: but if any perſon ſtretch it further, he ſhall forfeit for the firſt half yard in length, or firſt inch in breadth overſtretched 10 *s.* and for every other half yard in length, or half inch in breadth 20 *s.* *ſ.* 6.

The conviction to be before one juſtice, not being a dealer in cloth, on oath of one witneſs, reaſonable notice being firſt given to the perſon accuſed. *ſ.* 10.

The forfeitures (if not paid in ten days after notice of the conviction given at the offender's laſt place of abode, and if he ſhall not appeal) to be levied by the conſtable by warrant of a juſtice by diſtreſs, rendering the overplus on demand, charges of diſtreſs and ſale being firſt deducted: To be

be distributed (after deducting the charges of conviction) half to the informer, and half to the treasurer for the expences of carrying the act into execution: For want of distress, to be committed to the house of correction to hard labour for one month. *s.* 10.

Persons aggrieved may appeal to the next quarter sessions to be held after 14 days from the conviction, giving ten days notice to the informer. And the justices there, may award costs. *s.* 12.

2. By the 5 *G.* 3. *c.* 51. The justices for the said *West-Riding* (not being dealers in woollen cloth, nor occupiers of any fulling mill) shall, at *Easter* sessions yearly, appoint so many men as they think proper (following or having been brought up in the manufacture of woollen cloth in the said Riding, and under 60 years of age) to be *searchers* and measurers, and allow them salaries. *s.* 2. Other woollen cloth.

And shall also appoint *inspectors* (not exceeding 12 in number) of broad woollen cloths, and of the work-shops, tenter grounds, and warehouses; with salaries, not less than 20 *l.* a year. *s.* 7.

And also *supervisors* (not exceeding 4 in number) of the conduct and behaviour both of the searchers and inspectors; with salaries, not less than 40 *l.* a year, and 10 *l.* more, if their duty require them to keep a horse. *id.*

All of them, before they enter upon their office, to be sworn before a justice, that they will well and truly, to the best of their skill and power, execute such office. *id.*

And the said officers shall obey such orders, as shall be made by the justices at the said *Easter* sessions yearly. *s.* 13.

And if any of the said officers shall die, or become incapable by sickness or other accident within the year; one justice near the place may appoint another till the end of the year, or during such sickness or incapacity. *s.* 10.

The maker of cloth, shall weave or sew into the head of every piece by him made, his name and place of abode. *s.* 18.

And at the fulling mill, for every yard of cloth exceeding 58 yards, whether in one cloth, or two short cloths or ends, which shall be milled in one stock at one time, the owner shall pay to the miller an halfpenny for every yard above 58, over and above the usual price for milling a stock-ful or 58 yards. *s.* 19.

And all disputes between clothiers and millers, relating to the wages for milling, shall, if such miller desire it, and the matter in dispute do not exceed 40 *s* be determined by one justice; who may, on complaint, summon the parties, adjudge

adjudge damages, and give coſts not exceeding 10*s.* and levy the ſame by diſtreſs, if not paid in ten days. *ſ.* 20.

The ſearchers ſhall, at the fulling-mills, meaſure the cloths and ends or half cloths there milled, within ſix and not ſooner than four hours, after the ſame ſhall have been ſtreamed or waſhed in the goit or mill ſtream; and if the ſame ſhall not be ſtreamed or waſhed, then within four hours after they come out of the ſtock. *ſ.* 3.

And ſuch ſearcher ſhall affix and rivet on one end of each cloth, a ſeal of lead, to be furniſhed by the maker, and ſtamp thereon his name, and the length and breadth, together with the number, beginning with number one at the 25th of *March* yearly, and ſo continuing progreſſively to the 25th of *March* next following. *id.*

And ſhall enter in a book, to be provided by the treaſurer of the ſaid riding, the name and place of abode of the maker, the colour or ſort of the cloth, and the length, breadth, and number on the ſeal. *id.*

And ſhall give once a month, to the ſuperviſor within the diſtrict, an account of all the cloths milled, meaſured, and ſtamped at ſuch mill. *id.*

And the owner ſhall pay to the ſearcher, for the ſeal of every whole cloth 35 yards long or upwards, 6*d.* for every end or half cloth, leſs than 35 yards, and more than 30, 4*d.* leſs than 30 yards, 3*d.* Which ſums ſhall be accounted for by ſuch ſearcher to the ſaid treaſurer. *id.*

Searcher making default, ſhall, for the firſt offence, forfeit 20*s.* for the ſecond offence, ſhall forfeit his office. *ſ.* 4.

If the maker ſhall take away his cloth, before it be meaſured and ſtamped within the times before mentioned; or before the money be paid for ſtamping the ſame; or ſhall take away his cloth after nine o'clock in the evening, or before five in the morning, unleſs the ſame be meaſured and ſtamped; he ſhall forfeit 20*s.* *ſ.* 5.

The maker of cloth called broad cloth, ſhall, after it is brought from the mill, and before it be put upon the tenter, meaſure the ſame, and affix and rivet a ſeal of lead upon the other end, and ſtamp thereon the length and breadth. *ſ.* 6.

The owner of every tenter ſhall meaſure the ſaid tenter, and mark in figures the true length of yards (at 37 inches to the yard), beginning at number one, and marking every yard diſtinctly on the top bar on the foreſide; on pain of 5*l.* *ſ.* 22.

If any perſon ſhall overſtretch more than one yard in in twenty in length, or more than one inch in twelve in breadth

breadth (the whole yard in breadth containing 36 inches only); he shall forfeit for every quarter of a yard in length 10*s.* and for every inch in breadth 20*s.* *s.* 21.

If any person shall take off, alter, or counterfeit any such mark or seal, before the cloth be taken off the tenters and brought to the press; every person so offending, and every person in whose custody such cloth shall be found, shall forfeit not exceeding 5 *l.* nor less than 40*s.* *s.* 18.

If any person shall use in dressing of cloth, any cards made with wire, or with teeth of iron or other metal; he shall forfeit 40*s.* *s.* 23.

The inspector or supervisor may, in the day time enter into any shops, out-houses, tenter-grounds, or warehouses, to search; and any person obstructing the same shall forfeit 10*l.* *s.* 11.

The supervisors shall be daily employed in visiting the mills, tenter-grounds, workshops, and places within their districts, and every such supervisor shall measure, and stamp with a seal of lead having his name impressed, so many of the said cloths as he conveniently can; and keep an account thereof; and transmit the same, together with the accounts received by him from the searchers, to the justices at every quarter-session. *s.* 8.

And if the inspector or supervisor shall find any cloth falsely stamped by the searcher, above two inches in breadth or one yard in length; he shall within seven days give information thereof to a justice: and such searcher shall, on conviction before such justice, forfeit 10*s.* *s.* 9.

If the inspector shall find any cloth without the seal; or such seal defaced, counterfeited, or altered; or that any of the cloths is stretched beyond the dimensions allowed by this act; or that the name and place of abode of the maker is cut or altered: the owner, or person in whose custody such cloth shall be found, shall forfeit not exceeding 5*l.* nor less than 40*s.* *s.* 11.

Provided, that nothing herein shall extend to give power to the inspector to search any cloths pressed and packed up for exportation. *s.* 12.

If the maker shall expose any cloth to sale without such mark as aforesaid, or without seals as before directed; he shall forfeit 20*s.* for every such piece. *s.* 18.

The buyer, if he suspects any fraud, may within six weeks (on two days notice in writing to all the parties who measured and stamped the cloth) put it into cold water not exceeding four hours, and cause the same to be measured by an inspector or supervisor; and if there shall be

be found leſs in length or leſs in breadth, in more than one half part of the length thereof, than is mentioned on any of the ſeals; the ſearcher or ſupervisor, who meaſured and ſtamped the ſame, ſhall, on conviction of having affixed ſuch falſe ſeals, forfeit for two inches in breadth, or one yard in length that ſuch cloth ſhall fall ſhort, 5*s.* for every other inch in breadth or yard in length 10*s.* *ſ.* 14.

And in ſuch caſe new ſeals ſhall be affixed thereon, containing the true length and breadth, which ſhall be the rule of payment for the ſame; ſave that the buyer may retain the value of ſo many yards as the cloth fell ſhort of the former admeaſurement. *ſ.* 15.

But the buyer ſhall permit the perſons informed againſt to examine the cloth, that no frauds have been committed by the buyer or owner; otherwiſe the proſecution ſhall not proceed. *ſ.* 17.

The treaſurer may deduct the ſums forfeited by the ſearchers, inſpectors, and ſupervisors, out of their ſalaries. *ſ.* 16.

Moreover, the inſpectors or ſupervisors making default in the execution of their office ſhall forfeit the ſame. *ſ.* 8.

Information on oath ſhall be given of offences (not herein otherwiſe provided for) within twenty days after the offence ſhall be diſcovered; and convictions thereon ſhall be made, on oath of one witneſs, before one juſtice (not being a dealer in woollen cloth, nor occupier of a fulling-mill) notice being firſt given of the charge to the perſon accuſed. ——Perſons aggrieved may appeal (giving ten days notice) to the next ſeſſions to be held after fourteen days from the conviction, and the juſtices there may award coſts.——If the penalties ſhall not be paid in ten days, or the party ſhall not appeal; the ſaid juſtice (or any other juſtice for the ſaid riding or any corporation within the ſame, on certificate of the conviction ſent to him by the ſaid juſtice) ſhall cauſe the ſame to be levied by diſtreſs: The ſame to be diſtributed, half to the informer, and half to the treaſurer. And where no ſufficient diſtreſs can be found, the juſtice ſhall commit him to the houſe of correction not exceeding three months. *ſ.* 24, 25.

The juſtices, ſearchers, inſpectors, and ſupervisors, ſhall tranſmit quarterly to the ſeſſions an account of their proceedings, and pay to the treaſurer the ſums above required; which if any of them ſhall neglect to do for twenty days after ſuch ſeſſions, he ſhall, on conviction upon the oath of one witneſs before two juſtices, forfeit 10*l.* *ſ.* 26.

The

The money in the treaſurer's hands to be applied, after payment of the charges of the act to payment of the ſalaries of the ſearchers or meaſurers, inſpectors, and ſupervifors. *ſ.* 28.

And after the charges of the act ſhall be paid, the juſtices at *Eaſter* ſeſſions yearly may increaſe or diminiſh the rates for meaſuring, ſtamping and ſealing; ſo as the ſame ſhall not exceed 6*d.* for a whole cloth, and 3*d.* for an end or half cloth. *ſ.* 29.

XIII. Concerning burying of the dead in woollen cloth.

1. By the 30 *C.* 2. *c.* 3. (which is required to be given in charge at the aſſizes and ſeſſions) no corpſe of any perſon (except thoſe who ſhall die of the plague) ſhall be buried in any ſhirt, ſhift, ſheet or ſhroud, or any thing whatſoever made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or in any ſtuff or thing, other than what is made of ſheep's wool only, or be put into any coffin lined or faced with any ſort of cloth or ſtuff, or any other thing whatſoever, that is made of any material but ſheep's wool only. *ſ.* 3, 9, 10.

2. And the miniſters ſhall take an exact account, and keep a regiſter book, to be provided at the charge of the pariſh, and make a true entry therein of all perſons buried in their reſpective pariſhes or precincts, or in ſuch common burial places as their reſpective pariſhioners are uſually buried. *ſ.* 4, 7.

3. Within eight days after the interment, ſome relation of the party deceaſed, or other credible perſon, ſhall cauſe an affidavit (A) in writing to be made under the hands and ſeals of two or more credible witneſſes, ſetting forth that ſuch deceaſed perſon was not put in, wrapt, or wound up, or buried in any ſhirt, ſhift, ſheet or ſhroud, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or other than what is made of ſheep's wool only, or in any coffin lined or faced with any cloth, ſtuff, or any other thing whatſoever, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or any other material but ſheep's wool only: And ſhall bring the ſame and make oath thereof, before the mayor, or a juſtice of the peace, or maſter of chancery [and if no juſtice ſhall reſide or be to be found in the pariſh where the party is interred, then to any parſon, vicar, or curate, in any other pariſh within the county, 32 *C.* 2. *c.* 1.] who ſhall adminiſter the oath and atteſt

atteſt the ſame under their hands upon ſuch affidavit, *gratis*. *ſ.* 4, 5.

4. And ſhall (within eight days as aforeſaid) bring the ſame ſo ſigned and atteſted, to the miniſter; who ſhall enter the ſame in the regiſter, *ſ.* 4, 7.

5. And if no relation of the party buried, or other perſon, ſhall bring ſuch affidavit as aforeſaid, Then the goods and chattels of the party deceaſed ſhall be liable to the forfeiture of 5*l.* to be levied by diſtreſs, by warrant of the chief magiſtrate in any town corporate, or of any juſtice of the peace: Or in default thereof, by like diſtreſs of the goods of the perſon in whoſe houſe the party died; or of any that had a hand in putting ſuch perſon into any ſhirt, ſhift, ſheet, ſhroud, or coffin, or did order or diſpoſe the doing thereof; and in caſe ſuch perſon were a ſervant and died in the family of his or her maſter or miſtreſs, the ſame ſhall be levied on the goods of ſuch maſter or miſtreſs; and if ſuch perſon died in the family of his or her father or mother, then the ſame ſhall be levied on the goods of his or her father or mother: Which ſaid forfeiture ſhall be levied, paid, and allowed out of the eſtate of the ſaid deceaſed perſon, before any ſtatute, judgment, debt, legacy, or other duty whatſoever. *ſ.* 4.

6. And in ſuch caſe, where no affidavit ſhall be brought in eight days as aforeſaid, to the miniſter where the party was buried, he ſhall forthwith give, or cauſe notice (B) thereof to be given in writing under his hand, to the churchwardens or overſeers; on pain of 5*l.* with full coſts (provided the ſuit be commenced in ſix months) one fourth to the king, two fourths to the poor where ſuch perſon offending dwells, and one fourth to him that ſhall inform and ſue. *ſ.* 5, 6.

And moreover, where no ſuch affidavit ſhall be brought to him within ſuch time, he ſhall enter a memorial thereof in the ſaid regiſtry, againſt the name of the party interred, and of the time when he certified the ſame to the churchwardens or overſeers. *ſ.* 7.

7. The ſaid churchwardens or overſeers ſhall within eight days after ſuch notice (on like pain as the miniſter) repair to the chief magiſtrate, if ſuch party was buried in a town corporate, or elſe to a juſtice of the peace: Which ſaid juſtice or magiſtrate, on certificate from ſuch miniſter, ſhall (on the like pain) forthwith grant a warrant (C) for the levying of the ſaid forfeiture on the goods of the parties before mentioned, rendering the overplus, all reaſonable charges being firſt deducted; half of which ſhall be to the poor, and half to the informer. *ſ.* 5.

8. And

8. And when the overſeers ſhall account, they ſhall give an account of the name and quality of every perſon interred within their pariſh from the time of their former account, and of ſuch certificate as came to their hands from ſuch miniſter, and of their levying the penalties, and of their diſpoſal thereof; on pain of 5 *l.* to be levied by diſtreſs, by warrant of the juſtices, or two of them, to whom they ſhall account. And no overſeers account ſhall be allowed, until they ſhall have therein accounted for the burials as aforeſaid: *ſ.* 8.

XIV. Againſt importation of woollen cloth.

No foreign woollen cloth ſhall be imported, on pain of forfeiture, and further puniſhment at the king's will. 11 *Ed.* 3. *c.* 3. 4 *Ed.* 4. *c.* 1. *ſ.* 7.

XV. Encouragement of the exportation of woollen manufactures.

Woollen manufactures ſhall be exported cuſtom free. 11 & 12 *W. c.* 20.

A. Affidavit for burying in woollen.

Weſtmorland. *BE it remembered, that on the——day of——* A. W. *of——yeoman, and* B. W. *of——yeoman, being two credible perſons, do make oath, That* A. D. *late of—— in the pariſh of—— in the county aforeſaid, on the—— day of this preſent month of—— was not put in, wrapt or wound up, or buried in any ſhirt, ſhift, ſheet, or ſhroud, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or other than what is made of ſheep's wool only, or in any coffin lined or faced with any cloth, ſtuff, or any other thing whatſoever made or mingled with flax, hemp, ſilk, hair, gold or ſilver, or any other material but ſheep's wool only.*

A. W.
B. W.

Sworn before me, being one of his majeſty's juſtices of the peace for the ſaid county [or, *vicar of—— in the ſaid county, there being no juſtice of the peace reſiding (or to be found) in the ſaid pariſh of——*] *the day and year aboveſaid.*

J. P.

B. The minister's notice of affidavit of burying in woollen not being brought.

Westmorland. } To the churchwardens and overseers of the poor of the parish of —— in the said county.

I A. M. *minister of the parish of* —— *aforesaid, in the county aforesaid, do hereby give you notice, that on the* —— *day of* —— *the body of* A. D. *was buried within the said parish, and that no person whatsoever hath brought to me any affidavit pursuant to the statute made for burying in woollen. Witness my hand, the* —— *day of* ——.

C. Warrant to levy the penalty for not burying in woollen.

Westmorland. } To the constable of ——

WHEREAS *it duly appears to me* —— *one of his majesty's justices of the peace for the said county, that* A. D. *late of* —— *deceased, on the* —— *day of* —— *was buried within the parish of* —— *in the county aforesaid, and that no affidavit hath been brought within eight days afterwards to the minister of the said parish, that the said* A. D. *was buried in no other materials but sheep's wool only, pursuant to the statute in that case made*; [*and whereas it also duly appeareth unto me, that he said* A. D. *had no goods and chattels at the time of his death as aforesaid*; *and that he the said* A. D. *did die in the house of* A. O. *of* —— *yeoman, at* —— *aforesaid, in the county aforesaid*; Or, *that* A. O. *of* —— *yeoman, had a hand in, or did order and dispose, the putting the said* A. D. *deceased in a shirt, shift, sheet, shroud or coffin, contrary to the form of the statute aforesaid*; or, *that* A. M. *of* —— *yeoman, at the time of the death of him the said* A. D. *was master of him the said* A. D. *and that he the said* A. D. *servant to the said* A. M. *did die in the house of him the said* A. M. *at* —— *aforesaid*; or, *that* A. F. *of* —— *yeoman, was father to the said* A. D. *and that he the said* A. D. *did die in the family of him the said* A. F.] *These are therefore to command you forthwith to levy the sum of* 5 *l. by distress and sale of the goods and chattels which he the said* A. D. *had at the time of his death* [Or, *of the goods and chattels*

chattels of him the said A. O.] *rendering the overplus to —— your reasonable charges being first deducted: One moiety of which said sum of* 5 l. *you shall pay to the overseers for the use of the poor of the said parish where he the said* A. D. *was buried, and the other moiety to* A. I. *of —— yeoman, who informed me of the said offence, and did sue for the said forfeiture. Herein fail you not. Given under my hand and seal at —— in the county aforesaid, the —— day of —— in the —— year of the reign of ——.*

Wreck.

1. WRECK of the sea, in legal understanding, is applied to such goods, as after shipwreck at sea are by the sea cast upon the land; and therefore the jurisdiction thereof pertaineth not to the lord admiral, but to the common law. 2 *Inst.* 167. Wreck, what.

2. None of those goods which are called *jetsam* (from being *cast* into the sea while the ship is in danger, and after perisheth) or those called *flotsam* (from *floating* upon the sea after shipwreck) or those called *lagan* or *ligan* (goods thrown overboard before the shipwreck, which sink to the bottom of the sea) are to be esteemed wreck, so long as they remain upon the sea, and are not cast upon the land by the sea; but if any of them are cast upon the land by the sea, they are wreck. *Wood, b. c.* 2. Jetsam, flotsam & lagan.

3. Also by the 3 Ed. 1. c. 4. *Where a man, a dog, or a cat escape quick out of the ship, the ship or any thing therein shall not be adjudged wreck of the sea.* Living creature escaping.

A man, a dog, or a cat.] Which statute being but declaratory of the common law, these three instances are only put for examples; for besides these two kinds of beasts, all other beasts, fowls, and other living things are understood, whereby the property of the goods may be known. 2 *Inst.* 167, 168.

Escape quick out of the ship.] If a ship be ready to perish, and all the men therein (for the safeguard of their lives) leave the ship, and after, the forsaken ship perisheth; if any of the men be saved and come to land, the goods are not lost. 2 *Inst.* 167.

4. By the 17 Ed. 2. *The king shall have wreck of the sea throughout the realm.* To whom the wreck belongeth.

And the cauſe wherefore originally wreck was given to the crown, ſtood upon two main maxims of the common law. 1. That the property of all goods whatſoever muſt be in ſome perſon. 2. That ſuch goods as no ſubject can claim any property in, do belong to the king by his prerogative. 2 *Inſt.* 167.

Seizing wreck not felony.

5. The taking of goods whereof no one had a property at the time, is not felony; and therefore he who takes away a wreck, before it is ſeized by the perſon who has a right thereto, is not guilty of felony, and ſhall only be puniſhed by fine, or the like. 1 *Haw.* 93, 94. That is to ſay, he is not guilty of felony by the common law; but it is otherwiſe by the ſtatutes here following.

Aſſiſting ſhips in diſtreſs.

6. To preſerve ſhips ſtranded or in diſtreſs, from being plundered by the country people, it is enacted by the 12 *An. ſt.* 2. *c.* 18. and the 26 *G.* 2. *c.* 19. as follows: (Which ſaid act of the 12 *An.* is required to be read in the church four times a year, in all ſea port towns, and on the coaſt.)

The juſtice of the peace, mayor, bailiff, collector of the cuſtoms, or chief conſtable, who ſhall be neareſt to where any ſhip ſhall be ſtranded or caſt away, ſhall forthwith give publick notice for a meeting to be held as ſoon as poſſible of the ſheriff or his deputy, the juſtices of the peace, mayors, coroners, and commiſſioners of the land tax, or any five of them, who ſhall employ proper perſons for ſaving the ſame; and ſhall command the conſtables neareſt to the ſea coaſts, to call together as many men as ſhall be thought neceſſary, to aſſiſt. And alſo the officers of exciſe ſhall be proper officers to put theſe acts in execution. And within the cinque ports, the lord warden of the cinque ports, the lieutenant of *Dover caſtle*, the deputy warden of the cinque ports, the judge official, and commiſſary of the court of admiralty of the cinque ports, ſhall put the ſame in execution there.

And any juſtice of the peace, in the abſence of the high ſheriff, may take ſufficient power of the county.

And they may command all ſhips at anchor near to aſſiſt; and if the officer of ſuch ſhip ſhall refuſe or neglect, he ſhall forfeit 100*l.* with coſts, to the officer of the ſhip in diſtreſs.

And to prevent confuſion, and contradictory orders, the perſons aſſembled to ſave any veſſel or goods as aforeſaid, ſhall conform in the firſt place to the orders of the maſter or other officer or owner, or perſons employed by them; and for want of their preſence or directions, then to the

orders of the officers of the cuſtoms, next to thoſe of the officers of exciſe, then of the ſheriff or his deputy, then of a juſtice of the peace, then of a mayor, then of the coroner, then of a commiſſioner of the land tax, then of a chief conſtable, then of a petty conſtable; and any perſon acting contrary to ſuch orders, ſhall forfeit not exceeding 5 *l.* to be levied by warrant of one juſtice, and in caſe of non-payment, to be committed to the houſe of correction, not exceeding three months.

And every ſuch ſheriff, juſtice, mayor, coroner, lord of a manor, under ſheriff, or commiſſioner of the land tax, ſhall have 4 *s.* a day during his attendance, out of the goods ſaved.

And if any perſon not impowered as above ſhall endeavour to enter on board ſuch veſſel, or ſhall deface the marks of the goods; he ſhall within 20 days make double ſatisfaction to the party grieved, at the diſcretion of the two next juſtices; or in default thereof, ſhall be ſent by them to the next houſe of correction, to be kept to hard labour for 12 months.

And if any perſons not employed by the maſter or owner, ſhall in the abſence of perſons employed by them, ſave any veſſel or goods, and cauſe them to be carried for the benefit of the owners into port, or any near adjoining cuſtom houſe, or place of ſafe cuſtody immediately giving notice thereof to a juſtice, magiſtrate, cuſtom houſe or exciſe officer; they ſhall be intitled to a reaſonable reward for the ſame, to be adjuſted by three neighbouring juſtices, which may be recovered by action at law: Or the ſame may be adjuſted by the officers abovementioned. And if the ſaid ſalvage (and the charges of 4 *s.* a day as abovementioned) ſhall not be paid in 40 days after the ſervices performed, the officer of the cuſtoms concerned in the ſalvage, may borrow or raiſe ſo much money as ſhall pay the ſame, upon a bill or bills of ſale, under his hand and ſeal, of of the veſſel, or cargo, or part thereof; redeemable nevertheleſs on payment of the principal, and intereſt at 4 *per cent.*

And more generally, by another clauſe it is enacted, that all perſons who ſhall act or be employed in preſerving any ſuch veſſel or cargo, ſhall be paid a reaſonable ſalvage, to be adjuſted by three neighbouring juſtices as abovementioned.

And if any perſon ſhall be aſſaulted, beaten and wounded, in the exerciſe of his duty in the ſalvage of any veſſel or goods, the offender on conviction by indictment at the

aſſizes or ſeſſions, ſhall be tranſported for ſeven years. And ſuch perſons moleſting the preſervation of the ſhip may be repelled by force.

And if any perſon ſhall plunder, ſteal, take away, or deſtroy any goods belonging to ſuch ſhip in diſtreſs, or which ſhall be wrecked or ſtranded (whether any living creature be on board or not) or any tackle, proviſion, or part of ſuch ſhip; or ſhall beat or wound, with intent to kill, or otherwiſe wilfully obſtruct the eſcape of any perſon endeavouring to ſave his life from ſuch ſhip, or the wreck thereof; or ſhall put out any falſe light, with intent to bring any veſſel into danger; he ſhall be guilty of felony without benefit of clergy. Provided that when goods of ſmall value ſhall be ſtranded or caſt on ſhore, and ſtolen without circumſtances of cruelty, outrage, or violence; the offenders may be proſecuted for petit larceny only.

And if any perſon ſhall make any hole in any ſuch ſhip in diſtreſs, or ſteal any pump belonging thereto, or wilfully do any thing tending to the immediate loſs of ſuch ſhip, he ſhall be guilty of felony, without benefit of clergy.

And if oath be made before a magiſtrate, of any ſuch plunder or theft, or of the breaking of any ſuch ſhip, and the examination in writing thereupon taken be delivered to the clerk of the peace, he ſhall cauſe the offender to be forthwith proſecuted for the ſame, either in the county where the fact ſhall be committed, or in any county next adjoining, in which adjoining county any indictment may be laid by any other proſecutor; and if the fact be committed in *Wales*, then the proſecution ſhall or may be carried on in the next adjoining *Engliſh* county; and the neceſſary charges of ſuch proſecution ſhall be paid by the treaſurer of the county where the fact ſhall be committed, as the juſtices in ſeſſion ſhall order: and if the clerk of the peace ſhall neglect his duty herein, he ſhall forfeit 100 *l.* to him who ſhall ſue.

And one juſtice, upon information on oath, of any part of the cargo or effects of any veſſel, loſt or ſtranded near the coaſts, being unlawfully conveyed or concealed, or of ſome reaſonable cauſe of ſuſpicion thereof, may iſſue his warrant for ſearching as in other caſes of ſtolen goods: And if the ſame be found in any houſe or other place, or in the poſſeſſion of any perſon not legally authoriſed to have the ſame; and the owner or occupier, or perſon in whoſe poſſeſſion the ſame ſhall be found, ſhall not immediately upon demand deliver the ſame; ſuch juſtice, on proof of ſuch refuſal, ſhall commit him to the common goal for ſix months, or until he ſhall have payed treble the value thereof.

And if any perſon ſhall offer to ſale any ſuch goods unlawfully taken away, or reaſonably ſuſpected ſo to have been, the perſon to whom they are offered, or any officer of the cuſtoms or exciſe, or conſtable, may ſeize the ſame; and ſhall, with all convenient ſpeed, carry the ſame, or give notice thereof, to one juſtice; and if ſuch perſon ſhall not in ten days make out his property therein, to the ſatisfaction of the juſtice, they ſhall be delivered over to the rightful owner, on payment of a reaſonable reward (to be aſcertained by the juſtice) to the ſeizor; and the juſtice may commit ſuch offender to the common gaol for ſix months, or till he ſhall have paid treble value. And if any perſon ſhall diſcover to any juſtice, magiſtrate, cuſtom houſe or exciſe officer, where any ſuch goods are wrongfully bought, ſold, or concealed, he ſhall be intitled to a reaſonable reward, to be adjuſted as the ſalvage.

And the officer of the cuſtoms who ſhall act in preſerving any veſſel or cargo, ſhall as ſoon as conveniently may be, cauſe or procure all perſons belonging to the veſſel, and others who can give an account thereof, to be examined on oath before a juſtice, as to the name or deſcription of the veſſel, the names of the maſter and owners, and of the places from or to which the veſſel was bound, and the occaſion of the diſtreſs; which examination the juſtice ſhall take in writing, and ſhall deliver a copy thereof to the ſaid officer of the cuſtoms, who ſhall forthwith tranſmit the ſame to the ſecretary of the admiralty, who ſhall publiſh the ſame in the next *London* gazette, or ſo much thereof as ſhall be neceſſary for the information of the perſons intereſted or concerned therein.

And if no perſon ſhall appear to claim the goods ſaved, the officer of the cuſtoms ſhall apply to three of the neareſt juſtices, who ſhall put him or ſome other reſponſible perſon in poſſeſſion, taking an account in writing of the goods, to be ſigned by the ſaid officer: and if they be not claimed in a year, they ſhall be ſold (and if periſhable, ſhall be forthwith ſold) and the money returned to the exchequer, till claimed by the owner.

But this ſhall not prejudice the right of any lords of manors, or others, lawfully claiming wreck, or goods, *flotſam*, *jetſam*, or *lagan*.

CONCLUSION.

HAVING thus finiſhed the work propoſed, it may be requiſite, upon the whole, to ſubjoin one ſingle reflection, which will occur to every reader, in peruſing almoſt every one of the larger titles of this book; and that is, concerning the poſſibility and expediency of reforming the ſtatute law. The ſtatutes at large, from the very nature of the thing, have in proceſs of time become very cumberſome, and very intricate. They are not to be purchaſed but for a larger ſum of money, nor to be underſtood without a greater expence of time, than a wiſe man would often chuſe to employ in that way.

The courſe to be taken in that matter ſeems to be this:

Firſt, actually to repeal all thoſe ſtatutes, and parts of ſtatutes, which are *virtually repealed* by ſubſequent contradictory ſtatutes.

Secondly, to repeal all thoſe ſtatutes which are *obſolete*, and grown out of uſe, by the alteration of times and circumſtances.

Thirdly, to repeal all thoſe ſtatutes, which being neither contradicted by ſubſequent ſtatutes, nor become obſolete, yet are rendered *uſeleſs* by ſubſequent ſtatutes enacting the ſame things over again, with alterations and amendments.

Fourthly, to repeal, or alter, all thoſe ſtatutes which are *frivolous*, that is, which poſſibly cannot, or probably never will be executed: ſuch as thoſe which appoint an offender to be whipped by the hands of the common hangman, where perhaps there is no ſuch officer; or which prohibit an offence under a very ſmall penalty to be recovered in the courts at *Weſtminſter*, where the reward will not countervail the expence of recovering it.

Fifthly, to omit all thoſe ſtatutes, which although enacted to be publick ſtatutes, yet are only of *private concern*; ſuch as thoſe for bridges in particular places, or paving the ſtreets in ſuch a market town; and the like.

Sixthly, as to the reſt, to lay all the ſtatutes, and clauſes of ſtatutes together, which relate to the ſame ſubject, and out of the whole to compoſe one, two, or more uniform and conſiſtent ſtatutes; and then to repeal all thoſe other, as workmen deſtroy the ſcaffolding when they have erected the building.

I know but of one material objection, againſt this method of proceeding; and that is, that the law being now for the moſt part well ſettled upon the ſtatutes, notwithſtanding

ſtanding their acknowledged diſorder and confuſion, this would tend to unſettle all again, by breaking the connexion which there is between one ſtatute and another, and one part of a ſtatute and another, altering the words and phraſes, and after all perhaps not much mending the matter, ſince it is poſſible that the new ſtatutes may be as liable to objections as the former were.

But this is an argument not ſo much againſt the thing itſelf, as againſt the manner in which it may be executed. As to breaking the connexion, it is certain that for the moſt part there is no connexion; and where there is, that may eaſily be preſerved: And it ought to be laid down as an invariable rule, to retain as much as poſſible the identical words and ſentences of the former ſtatutes; only rejecting what is ſuperfluous, inſerting the clear law as it now ſtands, and putting the ſame into a form more regular, conciſe, and eaſy. And this ſeemeth no way impoſſible to be done, by any perſon of a tolerable underſtanding, endowed only with a clear head, and much patience.

THE END.

A TABLE

A TABLE of the STATUTES contained in this Work, ſpecifying the Titles under which they are inſerted.

Hen. III.

9 *H.* 3. *c.* 14. clergy.
9 *H.* 3. *c.* 15. bridges.
9 *H.* 3. *c.* 17. torn.
9 *H.* 3. *c.* 35. torn.
51 *H.* 3. *ſt.* 4. diſtreſs.
52 *H.* 3. *c.* 4. diſtreſs.
52 *H.* 3. *c.* 10. clergymen, torn.
52 *H.* 3. *c.* 15. diſtreſs.

Edward I.

3 *Ed.* 1. *c.* 4. wreck.
3 *Ed.* 1. *c.* 9. coroner, felony, hue and cry.
3 *Ed.* 1. *c.* 10. coroner.
3 *Ed.* 1. *c.* 12. mute.
3 *Ed.* 1. *c.* 13. rape, women.
3 *Ed.* 1. *c.* 14. acceſſary, proceſs.
3 *Ed.* 1. *c.* 15. acceſſary, bail, burning, coin, homicide, larceny, priſon breaking, treaſon.
3 *Ed.* 1. *c.* 20. game.
3 *Ed.* 1. *c.* 25. maintenance.
3 *Ed.* 1. *c.* 26. extortion.
3 *Ed.* 1. *c.* 34. ſlander.
4 *Ed.* 1. *ſt.* 2. coroner, treaſure trove.
13 *Ed.* 1. *Circumſpecte agatis*, clergymen, ſlander.
13 *Ed.* 1. *ſt.* 1. *c.* 12. appeal.
13 *Ed.* 1. *ſt.* 1. *c.* 13. torn.
13 *Ed.* 1. *ſt.* 1. *c.* 34. rape, wife.
13 *Ed.* 1. *ſt.* 1. *c.* 38. jurors.
13 *Ed.* 1. *ſt.* 1. *c.* 39. ſheriff.
13 *Ed.* 1. *ſt.* 1. *c.* 46. burning, wood.
13 *Ed.* 1. *ſt.* 1. *c.* 47. game.
13 *Ed.* 1. *ſt.* 1. *c.* 49. buying of titles.
13 *Ed.* 1. *ſt.* 2. *c.* 1. hue and cry, robbery.
13 *Ed.* 1. *ſt.* 2. *c.* 2. robbery.
13 *Ed.* 1. *ſt.* 2. *c.* 4. hue and cry, watch.
13 *Ed.* 1. *ſt.* 2. *c.* 5. highways, robbery.
13 *Ed.* 1. *ſt.* 2. *c.* 6. churchyard, conſtable, hue and cry.
21 *Ed.* 1. *ſt.* 2. game.
28 *Ed.* 1. *c.* 11. maintenance.
33 *Ed.* 1. *ſt.* 2. conſpiracy, maintenance.
33 *Ed.* 1. *ſt.* 3. maintenance.
33 *Ed.* 1. *ſt.* 4. jurors.

Edw. II.

1 *Ed.* 2. *ſt.* 2. priſon breaking.

9 *Ed.*

9 *Ed.* 2. *c.* 3. clergymen.
9 *Ed.* 2. *c.* 4. ſlander.
9 *Ed.* 2 *c.* 9. clergymen, diſtreſs.
9 *Ed.* 2. *ſt.* 2. ſheriff.
17 *Ed.* 2. wreck.
17 *Ed* 2. *ſt.* 1. *c.* 9, 10. lunaticks.
17 *Ed.* 2. *ſt.* 1. *c.* 16. forfeiture.

Edw. III.

1 *Ed.* 3. *c.* 14. maintenance.
1 *Ed.* 3. *c.* 16. juſtices.
1 *Ed.* 3. *c.* 17. torn.
2 *Ed.* 3. *c.* 3. affray, forcible entry, riot.
4 *Ed.* 3. *c.* 2. juſtices.
4 *Ed.* 3. *c.* 9. ſheriff.
4 *Ed.* 3. *c.* 10. commitment, gaol.
5 *Ed.* 3. *c.* 4. ſheriff.
5 *Ed.* 3. *c.* 10. jurors.
5 *Ed.* 3. *c.* 14. watch.
9 *Ed.* 3. *ſt.* 1. *c.* 3. clergymen.
11 *Ed.* 3. *c.* 3. wool.
14 *Ed.* 3 *ſt.* 1. *c.* 7. ſheriff.
14 *Ed.* 3. *ſt.* 1. *c.* 8. coroner.
14 *Ed.* 3. *ſt.* 1. *c.* 10. gaol, ſheriff.
18 *Ed.* 3. *ſt.* 2. *c.* 2. juſtices.
20 *Ed.* 3. *c.* 4. maintenance.
25 *Ed.* 3. *ſt.* 3. *c.* 4. clergy.
25 *Ed.* 3. *ſt.* 5. *c.* 2. coin, treaſon.
25 *Ed.* 3. *ſt.* 5. *c.* 14. proceſs.
25 *Ed.* 3. *ſt.* 6. popery.
27 *Ed.* 3. *c.* 1. popery, præmunire.
27 *Ed.* 3. *c.* 2. pardon.
27 *Ed.* 3. *ſt.* 2. *c.* 8. jurors.
28 *Ed.* 3. *c.* 6. coroner.
28 *Ed.* 3. *c.* 7. ſheriff.
28 *Ed.* 3. *c.* 11. robbery.
28 *Ed.* 3. *c.* 13. jurors.
31 *Ed.* 3. *ſt.* 1. *c.* 15. torn.
34 *Ed.* 3. *c.* 1. arreſt, barators, juſtices, riot, ſurety.
34 *Ed.* 3. *c.* 5. juſtices.
34 *Ed.* 3. *c.* 8. jurors.
34 *Ed.* 3. *c.* 22. game.
37 *Ed.* 3. *c.* 19. game.
38 *Ed.* 3. *ſt.* 1. *c.* 12. jurors, maintenance.
42 *Ed.* 3. *c.* 9. eſtreat.
50 *Ed.* 3. *c.* 5. arreſt, churchyard, clergymen, publick worſhip.

Rich. II.

1 *R.* 2. *c.* 4. maintenance.
1 *R.* 2. *c.* 9. maintenance.
1 *R.* 2. *c.* 11. ſheriff.
1 *R.* 2. *c.* 15. arreſt, churchyard, clergymen, publick worſhip.
2 *R.* 2. *ſt.* 1. *c.* 5. ſlander.
3 *R.* 2. *c.* 3. popery,
5 *R.* 2. *c.* 8. forcible entry.
6 *R.* 2. *c.* 6. rape.
7 *R.* 2. *c.* 12. popery.
12 *R.* 2. *c.* 10. ſeſſions.
12 *R.* 2. *c.* 11. ſlander.
12 *R.* 2. *c.* 15. popery.
13 *R.* 2. *c.* 7. juſtices.
13 *R.* 2. *c.* 13. game.
13 *R.* 2. *c.* 19. game.
13 *R.* 2. *ſt.* 2. *c.* 1. pardon, rape.
13 *R.* 2. *ſt.* 2. *c.* 2. popery.
13 *R.* 2. *ſt.* 2. *c.* 3. popery.
14 *R.* 2. *c.* 11. ſeſſions.
15 *R.* 2. *c.* 2. forcible entry, riot.
16 *R.* 2. *c.* 5. popery, præmunire.
17 *R.* 2. *c.* 9. game.
20 *R.* 2. *c.* 1. affray.

Hen. IV.

4 *H.* 4. *c.* 5. ſheriff.
4 *H.* 4. *c.* 18, 19. attorney.
5 *H.* 4. *c.* 3. watch.
5 *H.* 4. *c.* 10. commitment, gaol.
7 *H.* 4. *c.* 3. eſtreat.

7 *H.* 4. *c.* 8. popery.
13 *H.* 4. *c.* 7. riot.

Hen. V.

1 *H.* 5. *c.* 4. attorney, ſheriff.
1. *H.* 5. *c.* 5. addition, indictment.
2 *H* 5. *c.* 4. ſeſſions.
2 *H.* 5. *c.* 8. riot.
2 *H.* 5. *c.* 9. riot.
2 *H.* 5. *ſt.* 2. *c.* 1. juſtices.
3 *H.* 5. *ſt.* 2. *c.* 4. popery.

Hen. VI.

2 *H.* 6. *c.* 15. game.
8 *H.* 6. *c.* 5. weights.
8 *H.* 6. *c.* 9. forcible entry, jurors.
8 *H.* 6. *c.* 10. proceſs.
8 *H.* 6. *c.* 12. larceny.
8 *H.* 6. *c.* 14. riot.
8 *H.* 6. *c.* 22. wool.
8 *H.* 6. *c* 29. jurors.
11 *H.* 6. *c.* 6. juſtices.
14 *H.* 6. *c.* 4. ſeſſions.
18 *H.* 6. *c.* 19. ſoldiers.
20 *H.* 6. *c.* 9. women.
23 *H.* 6. *c.* 8. ſheriff.
23 *H.* 6. *c.* 10. arreſt, ſheriff.
31 *H.* 6. *c.* 9. women.

Edw. IV.

1 *Ed.* 4. *c.* 2. proceſs, torn.
4 *Ed.* 4. *c.* 1. ſervants, wool.
7 *Ed.* 4. *c.* 1. wool.
7 *Ed.* 4. *c.* 3. wool.
17 *Ed.* 4. *c.* 4. tiles.
17 *Ed.* 4. *c.* 6. ſheriff.
22 *Ed.* 4. *c.* 6. game.

Rich. III.

1 *R.* 3. *c.* 3. bail, forfeiture.
1 *R.* 3. *c.* 4. jurors, torn.

Hen. VII.

1 *H.* 7. *c.* 4. clergymen.
1 *H.* 7. *c.* 7. game.
3 *H.* 7. *c.* 1. appeal, coroner, homicide, jurors, recognizance, ſurety.
3 *H.* 7. *c.* 2. acceſſary, women.
3 *H.* 7. *c.* 3. committment, gaol.
3 *H.* 7. *c.* 11. wool.
4 *H.* 7. *c.* 3. butchers.
4 *H.* 7. *c.* 13. clergymen.
4 *H.* 7. *c.* 20. information.
7 *H.* 7. *c.* 1. ſoldiers.
11 *H.* 7. *c.* 4. weights.
11 *H.* 7. *c.* 15. county court, eſtreat.
11 *H.* 7. *c.* 17. game.
12 *H* 7. *c.* 1. wool.
19 *H.* 7. *c.* 6. pewter.
19 *H.* 7. *c.* 10. gaol, ſheriff.
19 *H.* 7. *c.* 11. game.
19 *H.* 7. *c.* 13. jurors, riot.

Hen. VIII.

3 *H.* 8. *c.* 5. ſoldiers.
3 *H* 8. *c.* 11. phyſicians.
3 *H.* 8. *c.* 12. jurors.
4 *H.* 8. *c.* 7. pewter.
5 *H.* 8. *c.* 2. wool.
5 *H.* 8. *c.* 6. conſtables, jurors, phyſicians.
6 *H.* 8. *c.* 8. wool.
14 & 15 *H.* 8. *c.* 3. wool.

14 & 15 *H.* 8. *c.* 5. physicians.
14 & 15 *H.* 8. *c.* 10. game.
14 & 15 *H.* 8. *c.* 11. wool.
21 *H.* 8. *c.* 7. apprentices, infants, larceny, servants.
21 *H.* 8. *c.* 11. restitution.
21 *H.* 8. *c.* 13. clergymen.
22 *H.* 8. *c.* 5. bridges. county rate.
22 *H.* 8. *c.* 11. banks.
22 *H.* 8. *c.* 14. jurors.
23 *H.* 8. *c.* 1. burning.
23 *H.* 8. *c.* 5. sewers.
23 *H.* 8. *c.* 13. jurors.
23 *H.* 8. *c.* 17. wool.
24 *H.* 8. *c.* 5. burglary, homicide, robbery.
25 *H.* 8. *c.* 3. burning.
25 *H.* 8. *c.* 6. buggery.
25 *H.* 8. *c.* 9. pewter.
25 *H.* 8. *c.* 11. game.
25 *H.* 8. *c.* 13. cattle, sheep.
25 *H.* 8. *c.* 18. wool.
25 *H.* 8. *c.* 20. præmunire.
26 *H.* 8. *c.* 14. præmunire.
27 *H.* 8. *c.* 16. inrollment.
27. *H.* 8. *c.* 20. tithes.
27 *H.* 8. *c.* 24. justices.
28 *H.* 8. *c.* 14. wine.
32 *H.* 8. *c.* 7. tithes.
32 *H.* 8. *c.* 9. buying of titles, maintenance.
32 *H.* 8. *c.* 13. horses.
32 *H.* 8. *c.* 37. distress.
32 *H.* 8. *c.* 40. constable, physicians.
33 *H.* 8. *c.* 1. cheat.
33 *H.* 8. *c.* 3. wool.
33 *H.* 8. *c.* 4. pewter.
33 *H.* 8. *c.* 6. game.
33 *H.* 8. *c.* 7. pewter.
33 *H.* 8. *c.* 9. gaming.
33 *H.* 8. *c.* 16. wool.
33 *H.* 8. *c.* 17. hemp.
33 *H.* 8. *c.* 23. jurors.
34 & 35 *H.* 8. *c.* 14. clergy, clerk of the peace.
35 *H.* 8. *c.* 6. jurors.
35 *H.* 8. *c.* 17. wood.
37 *H.* 8. *c.* 1. clerk of the peace, custos rotulorum, justices.
37 *H.* 8. *c.* 6. burning, wood.
37 *H.* 8. *c.* 8. indictment.
37 *H.* 8. *c.* 23. wine.

Edw. VI.

1 *Ed.* 6. *c.* 1. publick worship.
1 *Ed.* 6. *c.* 6. wool.
1 *Ed.* 6. *c.* 7. justices.
1 *Ed.* 6. *c.* 12. introduction, burning, forfeiture, larceny, peers, treason,
2 & 3 *Ed.* 6. *c.* 1. publick worship.
2 & 3 *Ed.* 6. *c.* 2. soldiers.
2 & 3 *Ed.* 6. *c.* 10. excise, (malt).
2 & 3 *Ed.* 6. *c.* 15. alehouses, bread, butchers, justices.
2 & 3 *Ed.* 6. *c.* 19. fast days.
2 & 3 *Ed.* 6. *c.* 24. accessary, homicide.
2 & 3 *Ed.* 6. *c.* 25. county court.
2 & 3 *Ed.* 6. *c.* 37. pewter.
3 & 4 *Ed.* 6. *c.* 1. custos rotulorum.
3 & 4 *Ed.* 6. *c.* 2. wool.
3 & 4 *Ed.* 6. *c.* 3. wood.
3 & 4 *Ed.* 6. *c.* 10. popery.
3 & 4 *Ed.* 6. *c.* 19. cattle.
3 & 4 *Ed.* 6. *c.* 21. butter and cheese.
5 & 6 *Ed.* 6. *c.* 4. churchyard.
5 & 6. *Ed.* 6. *c.* 6. wool.
5 & 6. *Ed.* 6. *c.* 9. larceny.
5 & 6 *Ed.* 6. *c.* 10. burning.
5 & 6 *Ed.* 6. *c.* 11. forfeiture.
5 & 6 *Ed.* 6. *c.* 14. badgers, butter and cheese, cattle, forestalling, justices.

5 & 6 *Ed.* 6. *c.* 24. wool.
5 & 6 *Ed.* 6. *c.* 25. alehouſes, conviction.

Mary.

1 *M. ſ.* 1. *c.* 1. treaſon.
1 *M. ſ.* 2. *c.* 3. publick worſhip.
1 *M. ſ.* 2. *c.* 6. coin.
1 *M. ſ.* 2. *c.* 8. juſtices, ſheriff.
1 *M. ſ.* 2. *c.* 9. phyſicians.
1 & 2 *P. & M. c.* 4. vagrants.
1 & 2 *P. & M. c.* 5. wood.
1 & 2 *P. & M. c.* 10. jurors.
1 & 2 *P. & M. c.* 11. coin.
1 & 2 *P. & M. c.* 12. diſtreſs.
1 & 2 *P. & M. c.* 13. aſſizes, bail, coroner, evidence, examination, juſtices, recognizance.
1 & 2 *P. & M. c.* 14. wool.
2 & 3 *P. & M. c.* 3. cattle.
2 & 3 *P. & M. c.* 7. horſes.
2 & 3 *P. & M. c.* 8. highways.
2 & 3 *P. & M. c.* 10. evidence, examination.
2 & 3 *P. & M. c.* 13. wool.
4 & 5 *P. & M. c.* 3. ſoldiers.
4 & 5 *P. & M. c.* 4. burning.
4 & 5 *P. & M. c.* 5. wool.
4 & 5 *P. & M. c.* 7. jurors.
4 & 5 *P. & M. c.* 8. women.

Eliz.

1 *El. c.* 2. churchwardens, common prayer, diſſenters, lord's-day, popery, publick worſhip.
1 *El. c.* 12. linen.
1 *El. c.* 14. wool.
1 *El. c.* 17. game.
5 *El. c.* 1. diſſenters, popery, præmunire, ſeſſions.
5 *El. c.* 4. apprentices, infants, ſervants.
5 *El. c.* 5. apprentices, churchwardens, faſt days, infants, poor, wine.
5 *El. c.* 9. evidence, perjury.
5 *El. c.* 11. coin.
5 *El. c.* 12. badgers.
5 *El. c.* 13. highways.
5 *El. c.* 14. forgery.
5 *El. c.* 15. prophecies.
5 *El. c.* 20. vagrants.
5 *El. c.* 21. game.
5 *El. c.* 26. inrollment.
8 *El. c.* 3. ſheep.
8 *El. c.* 4. indictment, larceny.
8 *El. c.* 7. wool.
8 *El. c.* 8. horſes.
8 *El. c.* 9. alehouſes.
8 *El. c.* 12. wool.
13 *El. c.* 2. popery.
13 *El. c.* 7. bankrupt.
13 *El. c.* 9. ſewers.
13 *El. c.* 25. badgers, foreſtalling.
14 *El. c.* 3. coin.
14 *El. c.* 5. county rate, gaol.
14 *El. c.* 9. jurors.
14 *El. c.* 12. wool.
18 *El. c.* 1. coin.
18 *El. c.* 3. baſtards.
18 *El. c.* 5. information.
18 *El. c.* 7. burglary, clergy, rape, women.
18 *El. c.* 10. highways.
23 *El. c.* 1. diſſenters, popery, publick worſhip.
23 *El. c.* 10. game.
27 *El. c.* 2. acceſſary, popery.
27 *El. c.* 7. jurors.
27 *El. c.* 12. ſheriff.
27 *El. c.* 13. black act, hue and cry, robbery.
29 *El. c.* 6. diſſenters, popery, publick worſhip.
31 *El. c.* 3. proceſs.

31 *El. c.* 4. ſtores.
31 *El. c.* 5. buying of tithes, extortion, foreſtalling, gaming, indictment, information, maintenance.
31 *El. c.* 7. cottage.
31 *El. c.* 11. forcible entry.
31 *El. c.* 12. horſes, reſtitution.
35 *El. c.* 1. diſſenters.
35 *El. c.* 2. popery.
35 *El. c.* 7. faſt days.
35 *El. c.* 10. wool.
39 *El. c.* 9. women.
39 *El. c.* 15. larceny.
39 *El. c.* 17. vagrants.
39 *El. c.* 20. wool.
43 *El. c.* 2. apprentices, churchwardens, clergy, commitment, conſtable, cottage, county rate, gaol, infants, poor.
43 *El. c.* 3. ſoldiers.
43 *El. c.* 7. corn, wood.
43 *El. c.* 10. wool.
43 *El. c.* 13. burning, northern borders.
43 *El. c.* 14. fuel.

James I.

1 *J. c.* 4. popery, publick worſhip.
1 *J. c.* 6. ſervants.
1 *J. c.* 8. homicide, indictment.
1 *J. c.* 9. alehouſes, churchwardens.
1 *J. c.* 11. polygamy.
1 *J. c.* 15. bankrupt.
1 *J. c.* 17. apprentices.
1 *J. c.* 22. butchers, leather, Lord's day.
1. *J. c.* 25. corn.
1 *J. c.* 27. churchwardens, game.
1 *J. c.* 31. plague.
3 *J. c.* 4. churchwardens, diſſenters, popery, publick worſhip.
3 *J. c.* 5. attorney, diſſenters, phyſicians, popery, publick worſhip.
3 *J. c.* 7. attorney.
3 *J. c.* 10. commitment, conſtable, felony, larceny.
3 *J. c.* 12. game.
3 *J. c.* 13. game.
3 *J. c.* 16. wool.
3 *J. c.* 17. wool.
3 *J. c.* 21. blaſphemy.
4 *J. c.* 1. northern borders.
4 *J. c.* 2. wool.
4 *J. c.* 4. alehouſes.
4 *J. c.* 5. alehouſes, churchwardens.
4 *J. c.* 6. leather.
7 *J. c.* 1. northern borders.
7 *J. c.* 3. apprentices.
7 *J. c.* 4. apprentices, baſtards, county rate, houſe of correction, poor, vagrants.
7 *J. c.* 5. churchwardens, conſtables, hue and cry, juſtices, poor.
7 *J. c.* 6. popery.
7 *J. c.* 7. ſervants.
7 *J. c.* 8. cattle.
7 *J. c.* 10. alehouſes.
7 *J. c.* 11. game.
7 *J. c.* 12. evidence.
7 *J. c.* 13. game.
7 *J. c.* 16. wool.
21 *J. c.* 3. præmunire.
21 *J. c.* 4. information, proceſs.
21 *J. c.* 7. alehouſes, churchwardens.
21 *J. c.* 8. ſurety.
21 *J. c.* 12. churchwardens, conſtable, juſtices, poor.
21 *J. c.* 15. forcible entry.
21 *J. c.* 16. ſlander.

21 *J.* *c.* 18. wool.
21 *J.* *c.* 19. bankrupt.
21 *J.* *c.* 22. butter and cheese.
21 *J.* *c.* 26. bail.
21 *J.* *c.* 27. bastard, homicide.
21 *J.* *c.* 28. apprentices, horses, sanctuary.

Charles I.

1 *C.* *c.* 1. churchwardens, Lord's day.
1 *C.* *c.* 4. alehouses.
3 *C.* *c.* 1. butchers, carrier, cattle, Lord's day.
3 *C.* *c.* 2. popery.
3 *C.* *c.* 3. alehouses, churchwardens, conviction.
3 *C.* *c.* 4. apprentices, bastards, cattle, poor.
16 *C.* *c.* 19. churchwardens, weights.
16 *C.* *c.* 21. gunpowder.

Charles II.

12 *C.* 2. *c.* 4. excise.
12 *C.* 2. *c.* 21. militia.
12 *C.* 2. *c.* 22. wool.
12 *C.* 2. *c.* 23. excise (spirituous liquors).
12. *C.* 2. *c.* 24. alehouses, excise, (ale, spirituous liquors), infants, purveyors.
12 *C.* 2. *c.* 25. wine.
12 *C.* 2. *c.* 29. militia.
12 *C.* 2. *c.* 32. sheep, wool.
12 *C.* 2. *c.* 34. tobacco.
13 *C.* 2. *c.* 1. præmunire.
13 *C.* 2. *c.* 5. petition.
13 *C.* 2. *c.* 10. game.
13 *C.* 2. *st.* 2. *c.* 1. office.
13 & 14 *C.* 2. *c.* 1. dissenters.
13 & 14 *C.* 2. *c.* 3. militia.
13 & 14 *C.* 2. *c.* 4. churchwardens, common prayer, dissenters, lecturer, publick worship.
13 & 14 *C.* 2. *c.* 5. apprentices, wool.
13 & 14 *C.* 2. *c.* 7. leather.
13 & 14 *C.* 2. *c.* 11. excise, jurors.
13 & 14 *C.* 2. *c.* 12. bastards, constable, poor, servants, vagrants.
13 & 14 *C.* 2. *c.* 13. buttons.
13 & 14 *C.* 2. *c.* 15. servants, silk.
13 & 14 *C.* 2. *c.* 18. wool.
13 & 14 *C.* 2. *c.* 19. wool.
13 & 14 *C.* 2. *c.* 21. sheriff.
13 & 14. *C.* 2. *c.* 22. northern borders.
13 & 14 *C.* 2. *c.* 24. bankrupt.
13 & 14 *C.* 2. *c.* 26. butter, churchwardens.
15 *C.* 2. *c.* 2. wood.
15 *C.* 2. *c.* 4. militia.
15 *C.* 2. *c.* 7. corn, forestalling, tobacco.
15 *C.* 2. *c.* 8. butchers.
15 *C.* 2. *c.* 11. excise (ale, coffee).
15 *C.* 2. *c.* 15. apprentices, linen.
16 *C.* 2. *c.* 7. gaming.
17 *C.* 2. *c.* 2. dissenters.
17 *C.* 2. *c.* 3. church.
17 *C.* 2. *c.* 7. distress.
18 *C.* 2. *c.* 2. cattle, game.
18 *C.* 2. *c.* 3. northern borders.
19 *C.* 2. *c.* 4. county rate, gaol.
20 *C.* 2. *c.* 5. leather.
20 *C.* 2. *c.* 6. servants.
20 *C.* 2. *c.* 7. cattle.
22 *C.* 2. *c.* 1. churchwardens, dissenters.
22 *C.* 2. *c.* 5. stores, wool.
22 *C.* 2. *c.* 8. churchwardens, corn, weights, wool.

22 *C.* 2. *c.* 12. highways, ſcavengers.
22 & 23 *C.* 2. *c.* 1. maim.
22 & 23 *C.* 2. *c.* 5. exciſe (ale).
22 & 23 *C.* 2. *c.* 7. burning, cattle, corn, horſes, ſheep, wood.
22 & 23 *C.* 2. *c.* 12. corn, weights.
22 & 23 *C.* 2. *c.* 13. corn.
22 & 23 *C.* 2. *c.* 20. goal.
22 & 23 *C.* 2. *c.* 22. clerk of the peace, eſtreat.
22 & 23 *C.* 2. *c.* 25. game.
22 & 23 *C.* 2. *c.* 26. tobacco.
25 *C.* 2. *c.* 2. conſtable, diſſenters, oaths, office, popery, ſeſſions.
29 *C.* 2. *c.* 3. evidence.
29 *C.* 2. *c.* 7. arreſt, churchwardens, lord's day, proceſs, robbery.
29 & 30 *C.* 2. *c.* 2. northern borders.
30 *C.* 2. *c.* 3. churchwardens, ſeſſions, wool.
30 *C.* 2. *c.* 8. coals.
30 *C.* 2. *c.* 9. game.
30 *C.* 2. *ſt.* 2. *c.* 1. diſſenters, oaths, popery.
31 *C.* 2. *c.* 1. ſoldiers.
31 *C.* 2. *c.* 2. bail, goal, præmunire, treaſon.
32 *C.* 2. *c.* 1. wool.
32 *C.* 2. *c.* 2. butter, cattle, churchwardens.

James II.

1 *J.* 2. *c.* 8. gunpowder.
1 *J.* 2. *c.* 17. poor.
1 *J.* 2. *c.* 19. corn.

William III.

1 *W.* *c.* 9. popery.
1 *W.* *c.* 12. corn.
1 *W.* *c.* 15. popery.
1 *W.* *c.* 18. blaſphemy, churchwardens, conſtable, diſſenters, jurors, oaths, publick worſhip.
1 *W.* *c.* 21. clerk of the peace, cuſtos rotulorum.
1 *W.* *c.* 22. exciſe, (ale).
1 *W.* *c.* 24. alehouſes, exciſe (ale).
1 *W.* *c.* 26. popery.
1 *W.* *c.* 32. wool.
1 *W.* *c.* 33. leather.
1 *W.* *ſ.* 2. *c.* 2. bail.
2 *W.* *c.* 5. diſtreſs.
2 *W.* *ſ.* 2. *c.* 4. exciſe (candles, glaſs).
2 *W.* *ſ.* 2. *c.* 8. hay.
3 *W.* *c.* 8. butter.
3 *W.* *c.* 9. acceſſary, burglary, clergy, larceny, mute, proceſs, women.
3 *W.* *c.* 10. game.
3 *W.* *c.* 11. churchwardens, poor, ſeamen.
3 *W.* *c.* 12. carrier, churchwardens, highways.
3 *W.* *c.* 15. exciſe (ſpirits).
4 *W.* *c.* 3. annuities, exciſe (ſpirits).
4 *W.* *c.* 4. bail.
4 *W.* *c.* 5. exciſe, (leather, plate, ſpirits).
4 *W.* *c* 7. butter.
4 *W.* *c.* 8. robbery.
4 *W.* *c.* 10. buttons.
4 & 5 *W.* *c.* 18. information, proceſs.
4 & 5 *W.* *c.* 22. proceſs.
4 & 5 *W.* *c.* 23. burning, game.
4 & 5 *W.* *c.* 24. clerk of the peace, eſtreat, jurors, ſeſſions. women.
5 *W.* *c.* 5. annuities.
5 *W.* *c.* 7. exciſe (ſalt).
5 *W.* *c.* 11. certiorari, highways.
5 *W.* *c.* 13. pardon.
5 *W.* *c.* 20. annuities, exciſe.
5 *W.* *c.* 21. ſoldiers, ſtamps.
6 *W.* *c.* 1. exciſe.
6 *W.* *c.* 4. churchwardens, conſtable, jurors, phyſicians.

6 & 7 *W.* c. 12. ſtamps.
6 & 7. *W.* c. 13. game.
6 & 7 *W.* c. 17. apprentices, coin.
7 & 8 *W.* c. 3. evidence, treaſon.
7 & 8 *W.* c. 6. tithes.
7 & 8 *W.* c. 15. parliament.
7 & 8 *W.* c. 19. alehouſes, coin.
7 & 8 *W.* c. 24. attorney.
7 & 8 *W.* c. 28. wool.
7 & 8 *W.* c. 29. highways.
7 & 8 *W.* c. 30. exciſe (ale, ſpirits).
7 & 8 *W.* c. 31. exciſe (ſalt), forgery.
7 & 8 *W.* c. 32. infants, jurors, ſeſſions.
7 & 8 *W.* c. 34. diſtreſs, evidence, examination, jurors, oaths, tithes.
8 & 9 *W.* c. 10. jurors.
8 & 9 *W.* c. 16. highways.
8 & 9 *W.* c. 17. hay.
8 & 9 *W.* c. 19. exciſe (ale, ſpirits).
8 & 9 *W.* c. 20. forgery.
8 & 9 *W.* c. 26. coin.
8 & 9 *W.* c. 30. apprentices, poor.
8 & 9 *W.* c. 31. partition.
8 & 9 *W.* c. 33. certiorari.
8 & 9 *W.* c. 36. ſervants.
9 & 10 *W.* c. 6. exciſe (ſalt).
9 & 10 *W.* c. 7. fireworks.
9 & 10 *W.* c. 11. poor.
9 & 10 *W.* c. 15. award.
9 & 10 *W.* c. 21. coin.
9 & 10 *W.* c. 25. ſtamps.
9 & 10 *W.* c. 27. churchwardens, pedlars.
9 & 10 *W.* c. 28. exciſe, (plate).
9 & 10 *W.* c. 32. blaſphemy.
9 & 10 *W.* c. 40. wool.
9 & 10 *W.* c. 41. forgery, ſtores.
9 & 10 *W.* c. 43. ſilks.
9 & 10 *W.* c. 44. exciſe (ſalt), ſtamps.
10 *W.* c. 2. buttons.
10 & 11 *W.* c. 4. exciſe (ſpirits).
10 & 11 *W.* c. 10 wool.
10 & 11 *W.* c. 12. militia.
10 & 11 *W.* c. 17. gaming.
10 & 11 *W.* c. 21. alehouſes, exciſe, (ale, ſpirits).
10 & 11 *W.* c. 22. exciſe (ſalt).
10 & 11 *W.* c. 23. burglary, churchwardens, clerk of the peace, conſtable, indictment, larceny.
10 & 11 *W.* c. 24. lord's day.
11 & 12 *W.* c. 3. buttons.
11 & 11 *W.* c. 4. popery, ſchoolmaſter.
11 & 12 *W.* c. 15. alehouſes, ſeſſions.
11 & 12 *W.* c. 19. county rate, gaol.
11 & 12 *W.* c. 20. corn, wool.
11 & 12 *W.* c. 21. lord's day.
12 & 13 *W.* c. 3. parliament.
12 & 13 *W.* c. 4. exciſe (plate).
12 & 13 *W.* c. 11. exciſe (ale, ſpirits).
13 *W.* c. 3. treaſon.

Anne.

1 *An.* c. 8 juſtices.
1 *An.* c. 9. coin, exciſe (plate).
1 *An.* c. 15. apples.
1 *An.* c. 18. bridges, country rate, highways.
1 *An.* c. 21. exciſe, (ſalt).
1 *An. ſt.* 2. c. 9. acceſſary, burning.
1 *An. ſt.* 2. c. 13. jurors.
1 *An. ſt.* 2. c. 14. exciſe (ſpirits).
1 *An. ſt.* 2. c. 22. alehouſes, ſtamps.
1 *An. ſt.* 2. c. 28. ſervants.
2 & 3 *An.* c. 3. annuities.
2 & 3 *An.* c. 6. apprentices, county rate.
2 & 3 *An.* c. 14. exciſe (ſalt).
3 & 4 *An.* c. 4. hawkers.
3 & 4 *An.* c. 18. jurors, ſeſſions.
4 *An.* c. 6. annuities, exciſe, (ſpirits).
4 *An.* c. 12. exciſe, (ſalt, ſpirits).

4 *An. c.* 14. churchwardens.
4 *An. c.* 16. jurors.
4 *An. c.* 19. apprentices.
4 *An. c.* 21. game.
5 *An. c.* 8, introduction, cattle, corn.
5 *An. c.* 14. game.
5 *An. c.* 19. annuities.
5 *An. c.* 20. silks.
5 *An. c.* 27. wine.
5 *An. c.* 29. corn, excise (salt).
5 *An. c.* 31. accessary, burglary, larceny, watch.
6 *An. c.* 5. annuities.
6 *An. c.* 7. præmunire, treason.
6 *An. c.* 8. wool.
6 *An. c.* 12. excise (salt).
6 *An. c.* 29. highways.
6 *An. c.* 31. burning, churchwardens, servants.
7 *An. c.* 13. wool.
7 *An. c.* 14. books.
7 *An. c.* 19. infants.
7 *An. c.* 21. treason.
7 *An. c.* 24. coin.
8 *An. c.* 6. buttons.
8 *An. c.* 7. excise (ale).
8 *An. c.* 9. apprentices, excise (candles), poor, stamps.
8 *An. c.* 13. excise, (wool).
8 *An. c.* 14. distress.
9 *An. c.* 2. plague.
9 *An. c.* 5. parliament.
9 *An. c.* 6. excise (candles) gaming, leather.
9 *An. c.* 7. popery.
9 *An. c.* 10. post.
9 *An. c.* 11. butchers, excise (leather), leather.
9 *An. c.* 12. alehouses, excise (hops).
9 *An. c.* 14. gaming.
9 *An. c.* 15. fuel.
9 *An. c.* 16. assault.
9 *An. c.* 18. highways.
9 *An. c.* 21. apprentices, poor.
9 *An. c.* 23. alehouses, excise (salt), hackney coaches, lord's days stamps, wine.
9 *An. c.* 25. game.
9 *An. c.* 26. game.
10 *An. c.* 2. dissenters.
10 *An. c.* 6. fuel.
10 *An. c.* 14. jurors.
10 *An. c.* 15. bankrupt.
10 *An. c.* 16. servants, wool.
10 *An. c.* 19. excise (linen, paper, soap), forgery, hackney coaches, stamps.
10 *An. c.* 23. parliament.
10 *An. c.* 25. militia.
10 *An. c.* 26. excise (candles, leather, soap, starch, wire) gaming, stamps.
12 *An. c.* 2. alehouses, excise (ale, malt), stamps.
12 *An. c.* 7. apprentices, burglary, dissenters, infants, larceny, servants.
12 *An. c.* 18. poor.
12 *An. st.* 2. *c.* 3. excise, (spirits).
12 *An. st.* 2. *c.* 9. excise, (leather, linen, paper, soap, starch), stamps.
12 *An. st.* 2. *c.* 14. popery.
12 *An. st.* 2. *c.* 18. ships, wreck.
12 *An. st.* 2. *c.* 19. excise (linen, paper).

George I.

1 *G. c.* 2. excise (starch).
1 *G. st.* 2. *c.* 2. excise (malt).
1 *G. st.* 2. *c.* 5, riot, sessions.
1 *G. st.* 2. *c.* 6. distress, tithes.
1 *G. st.* 2. *c.* 11. highways.
1 *G. st.* 2. *c.* 13. constable, justices, oaths, office, popery.
1 *G. st.* 2. *c.* 15. servants, wool.
1 *G. st.* 2. *c.* 18. game.
1 *G. st.* 2. *c.* 25. seamen, stores.
1 *G. st.* 2. *c.* 26. excise (linen, paper, soap).
1 *G. st.* 2. *c.* 41. wool.

1 *G. ſt.* 2. *c.* 46. tobacco.
1 *G. ſt.* 3. *c.* 47. ſoldiers.
1 *G. ſt.* 2. *c.* 48. burning, wood.
1 *G. ſt.* 2. *c.* 52. highways, ſcavengers.
1 *G. ſt.* 2. *c.* 55. popery.
1 *G. ſt.* 2. *c.* 57. hackney coaches, highways.
3 *G. c.* 4. exciſe (leather, ſpirits, ſtarch).
3 *G. c.* 11. game.
3 *G. c.* 15. burglary, clerk of the peace, eſtreat, larceny, ſheriff.
3 *G. c.* 16. ſheriff.
3 *G. c.* 18. popery.
3 *G. c.* 21. wool.
4 *G. c.* 6. hawkers.
4 *G. c.* 7. buttons.
4 *G. c.* 11. acceſſary, clergy, larceny, tranſportation, wool.
5 *G. c.* 2. exciſe (leather).
5 *G. c.* 4. diſſenters.
5 *G. c.* 6. office.
5 *G. c.* 8. poor.
5 *G. c.* 11. exciſe (linen), tobacco, wool.
5 *G. c.* 12. highways.
5 *G. c.* 14. forgery.
5 *G. c.* 15. game.
5 *G. c.* 18. exciſe (ſalt).
5 *G. c.* 19. ſtamps.
5 *G. c.* 26. gunpowder.
5 *G. c.* 27. foreign ſervice.
5 *G. c.* 28. game.
6 *G. c.* 4. forgery.
6 *G. c.* 6. highways.
6 *G. c.* 11. exciſe (plate, hops), forgery.
6 *G. c.* 16. burning, wood.
6 *G. c.* 18. forgery.
6 *G. c.* 19. baſtards, commitment, gaol, juſtices.
6 *G. c.* 21. alehouſes, exciſe (ale, hops, malt, ſpirits), poſt, ſtamps, wool.
6 *G. c.* 23 aſſault, burglary, county rate, robbery, tranſportation.
7 *G. c.* 3. plague,
7 *G. c.* 7. exciſe (linen).
7 *G. c.* 12. buttons.
7 *G. c.* 13. ſervants.
7 *G. c.* 20. exciſe (ale).
7 *G. c.* 31. bankrupt.
8 *G. c.* 2. gaming.
8 *G. c.* 4. exciſe (ſalt).
8 *G. c.* 6. oaths.
8 *G. c.* 8. plague.
8 *G. c.* 16. exciſe (ſalt).
8 *G. c.* 18. exciſe (ſpirits).
8 *G. c.* 19. game.
8 *G. c.* 22. forgery, ſtock.
8 *G. c.* 27. butter.
9 *G. c.* 5. forgery.
9 *G. c.* 7. juſtices, poor.
9 *G. c.* 8. ſtores.
9 *G. c.* 9. wool.
9 *G. c.* 12. annuities.
9 *G. c.* 19. gaming.
9 *G. c.* 22. black act, burning, cattle, corn, game, letter, ſeſſions, wood.
9 *G. c.* 27. ſervants.
10 *G. c.* 4. oaths, popery.
10 *G. c.* 10. exciſe (coffee).
11 *G. c.* 7. exciſe (paper).
11 *G. c.* 8. ſtamps.
11 *G. c.* 9. forgery.
11 *G. c.* 23. gunpowder.
11 *G. c.* 24. wool.
11 *G. c.* 29. ſhips.
11 *G. c.* 30. exciſe (candles, coffee, ſalt, ſoap, ſpirits).
12 *G. c.* 4. exciſe (malt).
12 *G. c.* 12. hackney coaches.
12 *G. c.* 28. exciſe.
12 *G. c.* 29. attorney.
12 *G. c.* 32. forgery.
12 *G. c.* 34. ſervants.
13 *G. c.* 7. exciſe (ale).
13 *G. c.* 23. ſervants, vagrants, wool.
13 *G. c.* 24. wool.

George II.

1 G. 2. ſt. 2. c. 16. exciſe (malt).
1 G. 2. ſt. 2. c. 17. wine.
2 G. 2. c. 1. exciſe, (malt).
2 G. 2. c. 21. homicide.
2 G. 2. c. 23. attorney, county court.
2 G. 2. c. 24. parliament.
2 G. 2. c. 25. forgery, larceny, perjury.
2 G. 2. c. 28. alehouſes, exciſe (ſpirits) gaming.
2 G. 2. c. 36. ſeamen, ſervants.
3 G. 2. c. 7. exciſe (ale, malt).
3 G. 2. c. 8. wool.
3 G. 2. c. 20. exciſe (ſalt).
3 G. 2. c. 25. jurors, ſeſſions.
3 G. 2. c. 29. poor.
4 G. 2. c. 7. jurors.
4 G. 2. c. 9. annuities.
4 G. 2. c. 14. exciſe (coffee, ſtarch).
4 G. 2. c. 18. forgery.
4 G. 2. c. 26. indictment.
4 G. 2. c. 27. ſail cloth.
4 G. 2. c. 28. diſtreſs.
4 G. 2. c. 32. larceny.
4 G. 2. c. 33. poſt.
5 G. 2. c. 12. corn.
5 G. 2. c. 18. attorney, juſtices.
5 G. 2. c. 19. baſtards, certiorari, poor ſeſſions.
5 G. 2. c. 20. gunpowder.
5 G. 2. c. 21. wool.
5 G. 2. c. 24. exciſe (coffee).
5 G. 2. c. 30. bankrupt.
5 G. 2. c. 33. highways.
6 G. 2. c. 14. indictment.
6 G. 2. c. 17. exciſe (ſpirits).
6 G. 2. c. 27. attorney.
6 G. 2. c. 31. baſtards.
6 G. 2. c. 35. gaming.
6 G. 2. c. 37. banks, black act, exciſe (hops), jurors.
7 G. 2. c. 9. highways.
7 G. 2. c. 19. exciſe (hops).
7 G. 2. c. 21. aſſault, robbery.
7 G. 2. c. 22. forgery.
7 G. 2. c. 25. wool.
8 G. 2. c. 12. exciſe (ſalt).
8 G. 2. c. 16. hundred, robbery.
8 G. 2. c. 20. highways, rivers.
8 G. 2. c. 30. ſoldiers.
9 G. 2. c. 5. juſtices, witchcraft.
9 G. 2. c. 18. perjury.
9 G. 2. c. 23. alehouſes, churchwardens, exciſe (ſpirits).
9 G. 2. c. 26. office.
9 G. 2. c. 30. foreign ſervice.
9 G. 2. c. 33. game.
9 G. 2. c. 34. annuities.
9 G. 2. c. 35. exciſe (ſpirits).
9 G. 2. c. 37. ſail cloth.
10 G. 2. c. 17. alehouſes, exciſe (ale, ſpirits).
10 G. 2. c. 27. exciſe (paper).
10 G. 2. c. 28. players.
10 G. 2. c. 32. banks, black act, burning, coalpits, game.
11 G. 2. c. 17. popery.
11 G. 2. c. 19. diſtreſs.
11 G. 2. c. 20. gaol, treaſurer.
11 G. 2. c. 22. corn.
11 G. 2. c. 24. parliament.
11 G. 2. c. 26. exciſe (ſpirits).
11 G. 2. c. 28. wool.
12 G. 2. c. 13. attorney, county court.
12 G. 2. c. 21. wool.
12 G. 2. c. 25 leather.
12 G. 2. c. 26. exciſe (plate).
12 G. 2. c. 28. gaming.
12 G. 2. c. 29. bridges, churchwardens, conſtable, county rate, gaol, houſe of correction, ſoldiers, treaſurer.
13 G. 2. c. 8. ſervants.
13 G. 2. c. 17. apprentices.
13 G. 2. c. 18. certiorari, county rate.

13 G. 2. c. 19. gaming.
13 G. 2. c. 21. coalpits.
13 G 2. c. 29. poor.
14 G. 2. c. 6. cattle, ſheep.
14 G. 2. c. 33. bridges, county rate, houſe of correction.
14 G. 2. c. 35. wool.
14 G. 2. c. 42. highways.
15 G. 2. c. 2. highways.
15 G. 2. c. 13. forgery.
15 G. 2. c. 20. exciſe (wire).
15 G. 2. c. 24. houſe of correction.
15 G. 2. c. 25. exciſe (ſpirits).
15 G. 2. c. 27. wool.
15 & 16 G. 2. c. 28. coin.
15 & 16 G. 2. c. 30. lunaticks.
15 & 16 G. 2. c. 32. gunpowder.
15 & 16 G. 2. c. 33. bent.
15 & 16 G. 2. c. 34. cattle, ſheep.
16 G. 2. c. 8. alehouſes, exciſe (ſpirits).
16 G. 2. c. 15. tranſportation.
16 G. 2. c. 18. juſtices.
16 G. 2. c. 26. hackney coaches, ſtamps.
16 G. 2. c. 29. highways.
16 G. 2. c. 31. eſcape, tranſportation.
17 G. 2. c. 3 poor.
17 G. 2. c. 5. introduction, arreſt, county rate, houſe of correction, lunaticks, poor, ſeamen, ſervants, vagrants, wool.
17 G. 2. c. 8. butter.
17 G. 2. c. 17. exciſe (ſpirits), ſoldiers.
17 G. 2. c. 30. linen.
17 G. 2. c. 37. poor.
17 G. 2. c. 38. poor.
17 G. 2. c. 39. treaſon.
17 G. 2. c. 40. ſtores.
18 G. 2. c. 9. exciſe (ale).
18 G. 2. c. 15. churchwardens, conſtables, jurors, phyſicians.
18 G. 2. c. 18. land tax, parliament.
18 G. 2. c. 20. juſtices.
18 G. 2. c. 22. apprentices.
18 G. 2. c. 26. exciſe (coffee).
18 G. 2. c. 27. linen.
18 G. 2. c. 28. exciſe.
18 G. 2. c. 33. highways.
18 G. 2. c. 34. gaming.
18 G. 2. c. 36. linen cloth.
19 G. 2. c. 12. exciſe (glaſs, ſpirits).
19 G. 2. c. 21. ſeamen, ſoldiers, ſwearing.
19 G. 2. c. 22. rivers.
19 G. 2. c. 32. bankrupt.
19 G. 2. c. 34. exciſe, wool.
20 G. 2. c. 3. windows.
20 G. 2. c. 10. exciſe (coaches).
20 G. 2. c. 19. apprentices, ſervants.
20 G. 2. c. 30. treaſon.
20 G. 2. c. 37. ſheriff.
20 G. 2. c. 42. introduction.
20 G. 2. c. 45. apprentices.
20 G. 2. c. 52. pardon.
21 G. 2. c. 10. poor, windows.
21 G. 2. c. 14. exciſe (coffee).
21 G. 2. c. 26. linen cloth.
21 G. 2. c. 28. carriers, highways.
22 G. 2. c. 24. robbery.
22 G. 2. c. 27. ſervants.
22 G. 2. c. 33. alehouſes, blaſphemy, buggery, burning, homicide, publick worſhip, robbery, ſeamen, ſwearing.
22 G. 2. c. 36. exciſe (wire).
22 G. 2. c. 38. gunpowder.
22 G. 2. c. 46. introduction, attorney, clerk of the peace, hundred, oaths, ſeſſions.
22 G. 2. c. 49. game.
23 G. 2. c. 11. perjury.
23 G. 2. c. 13. foreign ſervice, ſervants.
23 G. 2. c. 21. exciſe (candles, ſoap, ſtarch).
23 G. 2. c. 26. attorney, exciſe, turnips.
24 G. 2. c. 18. jurors.

24 *G.* 2. *c.* 40. alehouſes, exciſe, houſe of correction, poor.
24 *G.* 2. *c.* 41. tobacco.
24 *G.* 2. *c.* 43. highways.
24 *G.* 2. *c.* 44. arreſt, conſtable, juſtices.
24 *G.* 2. *c.* 45. larceny, rivers, ſhips.
24 *G.* 2. *c.* 55. arreſt, commitment, juſtices.
24 *G.* 2. *c.* 57. bankrupt.
25 *G.* 2. *c.* 10. black lead.
25 *G.* 2. *c.* 29. coroner, county rate.
25 *G.* 2. *c.* 36. burglary, county rate, evidence, felony, gaming, larceny.
25 *G.* 2. *c.* 37. homicide.
26 *G.* 2. *c.* 2. game.
26 *G.* 2. *c.* 3. exciſe (ſalt).
26 *G.* 2. *c.* 6. plague.
26 *G.* 2. *c.* 11. wool.
26 *G.* 2. *c.* 13. alehouſes, exciſe (ſpirits), poſt, tobacco.
26 *G.* 2. *c.* 14. juſtices.
26 *G.* 2. *c.* 19. county rate, ſhips, wreck.
26 *G.* 2. *c.* 27. baſtards, juſtices, poor.
26 *G.* 2. *c.* 28. highways.
26 *G.* 2. *c.* 30. highways.
26 *G.* 2. *c.* 31. alehouſes.
26 *G.* 2. *c.* 32. exciſe (ſalt, ſoap, ſtarch).
26 *G.* 2. *c.* 33. diſſenters, marriage, poor, women.
26 *G.* 2. *c.* 34. vagrants.
27 *G.* 2. *c.* 3. burglary, commitment, conſtable, county rate, evidence, felony, larceny.
27 *G.* 2. *c.* 7. ſervants.
27 *G.* 2. *c.* 15. black act, letter.
27 *G.* 2. *c.* 16. apprentices, highways, juſtices.
27 *G.* 2. *c.* 20. introduction, conſtable, diſtreſs, tithes.
28 *G.* 2. *c.* 1. ſoldiers.
28 *G.* 2. *c.* 12. game.
28 *G.* 2. *c.* 14. herring fiſhery.
28 *G.* 2. *c.* 17. highways.
28 *G.* 2. *c.* 19. alehouſes, apprentices, burning, exciſe (ſpirits), game.
29 *G.* 2. *c.* 8. plague.
29 *G.* 2. *c.* 12. alehouſes, gaol.
29 *G.* 2. *c.* 13. ſtamps.
29 *G.* 2. *c.* 14. exciſe (plate).
29 *G.* 2. *c.* 17. foreign ſervice.
29 *G.* 2. *c.* 19. jurors.
29 *G.* 2. *c.* 30. acceſſary, larceny.
29 *G.* 2. *c.* 31. infants, lunaticks, wife.
29 *G.* 2. *c.* 33. ſervants.
29 *G.* 2. *c.* 36. wood.
29 *G.* 2. *c.* 39. game.
30 *G.* 2. *c.* 12. ſervants.
30 *G.* 2. *c.* 19. alehouſes, annuities, ſtamps, wine.
30 *G.* 2. *c.* 21. game.
30 *G.* 2. *c.* 22. highways.
30 *G.* 2. *c.* 24. cheat, gaming, larceny.
30 *G.* 2. *c.* 28. highways.
31 *G.* 2. *c.* 10. ſeamen.
31 *G.* 2. *c.* 11. apprentices, poor, ſervants.
31 *G.* 2. *c.* 22. office, windows.
31 *G.* 2. *c.* 29. bread, weights.
31 *G.* 2. *c.* 31. alehouſes, ſtamps, wine.
31 *G.* 2. *c.* 32. exciſe (plate).
31 *G.* 2. *c.* 35. madder.
31 *G.* 2. *c.* 36. exciſe (ſpirits), ſail cloth.
31 *G.* 2. *c.* 40. cattle, hay.
31 *G.* 2. *c.* 41. wood.
31 *G.* 2. *c.* 42. black act.
32 *G.* 2. *c.* 10. exciſe (coffee, ſpirits).
32 *G.* 2. *c.* 17. exciſe.
32 *G.* 2. *c.* 18. bread, exciſe, wool.
32 *G.* 2. *c.* 19. wine.
32 *G.* 2. *c.* 24. exciſe (plate).

32 *G.* 2. *c.* 28. county rate, debtors, gaol, ſheriff.
32 *G.* 2. *c.* 29. exciſe (ſpirits).
32 *G.* 2. *c.* 32. linen cloth.
32 *G.* 2. *c* 33. land tax, office.
32 *G.* 2. *c.* 35. ſtamps.
33 *G.* 2. *c.* 7. exciſe (malt).
33 *G.* 2. *c.* 9. exciſe (ſpirits).
33 *G.* 2. *c.* 10. ſeamen.
33 *G.* 2. *c.* 25. hackney coaches.
33 *G.* 2. *c.* 27. game.
33 *G.* 2. *c.* 28. exciſe (ſpirits).

George III.

1 *G.* 3. *c.* 3. exciſe (ale, malt, ſpirits).
1 *G.* 3. *c.* 7. exciſe (ale).
1 *G.* 3. *c.* 13. juſtices.
1 *G.* 3. *c.* 17. debtors, gaol.
2 *G.* 3. *c.* 5. exciſe (ſpirits).
2 *G.* 3. *c.* 6. butter and cheeſe.
2 *G.* 3. *c.* 8. windows.
2 *G.* 3. *c.* 14. alehouſes, exciſe (ale).
2 *G.* 3. *c.* 15. apprentices, game, highways, Lord's day.
2 *G.* 3. *c.* 19. game.
2 *G.* 3. *c.* 20. militia.
2 *G.* 3. *c* 22. poor.
2 *G.* 3. *c.* 28. larceny.
2 *G.* 3. *c.* 29. game.
2 *G.* 3. *c* 31. ſeamen, ſervants.
2 *G.* 3. *c.* 35. militia.
2 *G.* 3. *c.* 36 ſtamps.
3 *G.* 3. *c.* 8. apprentices, poor, ſeamen, ſoldiers.
3 *G.* 3. *c.* 11. bread.
3 *G.* 3. *c.* 12. exciſe (cyder).
3 *G.* 3. *c.* 13. exciſe (malt).
3 *G.* 3. *c.* 16. churchwardens, ſeamen.
3 *G.* 3. *c.* 20. butter.
3 *G.* 3. *c.* 21. ſilks.
3 *G.* 3. *c.* 22. exciſe (ſpirits).
4 *G.* 3. *c.* 7. exciſe (cyder).
4 *G.* 3. *c.* 10. recognizance.
4 *G.* 3. *c.* 12. rivers and navigation.
4 *G.* 3. *c.* 14. fire in *London.*
4 *G.* 3. *c.* 16. infants.
4 *G.* 3. *c.* 17. militia.
4 *G.* 3. *c.* 24. parliament, poſt.
4 *G.* 3. *c.* 25, forgery.
4 *G.* 3. *c.* 31. wood.
4 *G.* 3. *c.* 33. bankrupt.
4 *G.* 3. *c.* 36. hackney coaches.
4 *G.* 3. *c.* 37. bankrupt, exciſe, linen.
5 *G.* 3. *c.* 10. cattle.
5 *G.* 3. *c.* 14. game.
5 *G.* 3. *c.* 21. land tax.
5 *G.* 3. *c.* 25. poſt.
5 *G.* 3. *c.* 34. militia.
5 *G.* 3. *c.* 35. ſtamps.
5 *G.* 3. *c.* 36. militia.
5 *G.* 3. *c.* 38. highways.
5 *G.* 3. *c.* 39. exciſe (cuſtoms).
5 *G.* 3. *c.* 43. cattle.
5 *G.* 3. *c.* 43. exciſe (candles, coffee, ſalt, ſoap), tobacco.
5 *G.* 3. *c.* 45. exciſe (coffee,) wood.
5 *G.* 3. *c.* 46. alehouſes, apprentices, ſtamps.
5 *G.* 3. *c.* 47. ſtamps.
5 *G.* 3. *c.* 48. ſilk.
5 *G.* 3. *c.* 51. woollen manufacture.

APPENDIX;

Concerning the Office of

JUSTICES of the PEACE,

In that Part of *GREAT-BRITAIN*

CALLED

SCOTLAND.

APPENDIX.

SINCE the union of the two kingdoms of *England* and *Scotland*, it is matter of curiosity, and may be of uſe, to inquire how the law ſtands, with reſpect to the office of a juſtice of the peace in that part of the united kingdom called *Scotland*; what connexion there is between the laws of the ſeveral kingdoms in this reſpect; and how by degrees they coaleſce (as it were), and draw nearer to each other every ſeſſion of parliament.

BEFORE the inſtitution of juſtices of the peace in *England* (which was not until the year 1327, in the firſt year of the reign of king *Edward* the third), the peace was preſerved within the ſaid kingdom of *England*, by *conſervators* choſen for that purpoſe in the county court; and there were other conſervators by virtue of their office, as coroners, and ſheriffs within the county, high conſtables within the ſeveral hundreds, and the petty conſtable within the decennary. Every man in the decennary was ſurety for the reſt; or if there was any for whom the reſt would not become bound, he was to be impriſoned till he could find ſuch ſurety.

THE view of *frank pledge* in the leet court, was the offspring of this inſtitution; wherein the ſuitors to the court were to take the oath of allegiance, and find ſureties or pledges to keep the king's peace; or otherwiſe were to be kept in priſon. The chief man of this pledge, was the borſholder, borowhead,

or headborow; from the *Saxon borge*, *borhoe*, or *borrow*, which ſignifieth a pledge.

We find in the *Scotch* law, of very ancient time, ſomething not unlike to this, under the name of LAW BORROWS.

LAW BORROWS, ſaith Lord *Stair*, (as the word itſelf imports,) ſignifies caution found to do nothing but by order of law. For a *burrow* or *burgh*, in the ancient *Scotch* language, is a cautioner, and *law burrows* is caution to keep the law; for the ſafety and ſecurity of the people, and to prevent evil acts from being done. *Stair*, *B.* 1. *Tit.* 9. *ſ.* 30.

And letters of law-borrows are granted, upon the complainant's ſwearing that he dreads bodily harm from the perſon complained of; or it hath been allowed ſufficient, if he gave other evidence of the party's ill inclination towards him, tho' he did not ſwear that he was afraid of him, which might be interpreted as diſhonourable. *Stair*, *B.* 4. *Tit.* 48. *ſ.* 2.

IN the *Regiam majeſtatem*, we find this ancient law: "Quha ever is *borgh* for ane other, to ſtand "to richt in anie action perteining to the king's "mercie, as anent the breaking of the king's peace, "or anie other; gif he can not produce him for "quohm he is pledge be reaſon of his borrow-"gange, he ſall fall in the king's mercie, and "thereby ſall be quite and frie of his borrow-"gange." *Reg. Maj. B.* 3. *c.* 1. *ſ.* 19 *.

IN

* Whether the *Regiam majeſtatem* was copied from *Glanville*, who was lord chief juſtice of *England* towards the end of the reign of king *Henry* the ſecond, or *Glanville's* book was taken from the *Regiam majeſtatem*, is not material to the preſent purpoſe: In either caſe it ſhews, that this was part of the law of *Scotland*, in thoſe early times. That the *Regiam majeſtatem* was indeed copied

In the 9th parliament of *James* the firſt, in the year 1429, *Statute* 129: "It is ſtatute and ordain-
"ed, that gif onie of the kingis liege, hes ony
"doubt of the life, outher be deed or mannance or
"violent preſumption, and he aſk ſovertie of the
"partie that the plaint is maid upon, ſo that the
"partie plaintife mak pruif of the deed or man-
"nance or of the violent preſumption maid or done
"till him, be his aith or other ſufficient pruife, and
"the ſchireffe do not that effeires till his office in
"that caſe, he ſall be in fourtie pund to the king,
"and aſſyth the partie."

In the 6th parliament of *James* 2d, 1449; *Stat.* 6. "It is ordained, that general peace be pro-
"claymed and keiped out-throw all the realme,
"that all men may travel ſurelie and ſickerly in
"merchandice and otherwaies in all places throw
"the land, ſwa that na man neede till have aſſu-
"rance ane of uther, but that the kingis peace be
"aſſurance till all men. And quha that offendis
"therein, to be puniſhed by the king or his of-
"ficiares. And that the king make ſik offici-
"ares, that can weill and may weill puniſh ſik
"treſpaſſoures. And attour, gif ony perſon dreadis
"ane uther, that he paſſe to the ſchireffe or to the
"officiares that it effeirs to, and make that knawin,
"or ſwear that he dreadis him; and they ſall take
"borrowes of peace, after the actes maid there-
"upon of before."

14 *Parl.*

copied from *Glanville*, hath (I think) been made apparent, from the *internal* evidence thereof, in comparing the books together, by the learned Mr. *Davidſon*, one of the clerks of the ſignet at *Edinburgh*, in a ſmall pamphlet lately publiſhed upon that ſubject; wherein he obſerves, that *Glanville's* book is regular, methodical, and conſiſtent throughout, and withal hath his name prefixed to it; whereas the *Regiam majeſtatem* was compoſed by no body knows who, and goes out of *Glanville's* method for no other aſſignable reaſon but only to diſguiſe the matter, and thereby is rendred confuſed, unſyſtematical, and in many places contradictory.

14 *Parl. James* 3d, 1487; *Stat.* 101. "It is "thought expedient, ſtatute, and ordained, for the "punition and juſtifieing of ſik treſpaſſours as hes "bene in times by-gane, after that they were taken "and arreiſted be the crowners, and in default that "they could finde na borrowes, nor there was na "caſtel to receive and keepe them in quhill the "juſtice aire, and their-throw eſcaiped and was put "fra the law; that therefore in time to cum, "quhair onie crowner arreiſtis and takis ſik treſ- "paſſoures, he ſall bring them to the ſchireffe of "the ſchire, quhilk ſchireffe ſall receive them and "keepe them in ſuretie and firmance, on our ſove- "raine lordis expences (quhair it failzies of their "awin gudes), quhill the nixt juſtice aire, and then "preſente them to the juſtice."

3 *Parl. James* 4th, 1491; *Stat.* 27. "It is ad- "viſed, ſtatute, and ordained, for the eſchewing of "ſlaughter, fore-thought fellonie, and debait, that "ſall happen betwixt onie perſons in time to cum, "be complaint maid to our ſoveraine lord, his "chancellar, or juſtice; that the chancellar or "preſident beand for the time with adviſe of the "councel, and juſtice with adviſe of his aſſeſſoures, "ſall put quhat paine of ſumme of money that "they think expedient, the parties and their actiones "beand conſiddered, that the partie compleinzieand "ſall be harmeles and ſkaithles in his perſon or "gudes, but fraude or guile, utherwaies then law "will. And quhat judge or judges that takes this "ſovertie, that they act the ſamin, or put in re- "membrance in their buik, that it may be ſchawin "to our ſoveraine lord and his councel."

6 *Parl. James* 6th, 1579; *Stat.* 77. "Foraſ- "meikle as the paines of breaking of law-borrowes "hes bene negligentlie taken up in time by-gane, be

" be reaſon the partie offended unto received na
" commoditie be the perſute of the action; there-
" foir it is ſtatute and ordained be our ſoveraine
" lord, with adviſe of the three eſtaites of this pre-
" ſent parliament, that the paines of breaking of
" law-borrowes to be fund in time cumming, ſall
" be equallie divided, the ane halfe to our ſove-
" raine lordis uſe, and the other halfe to apperteine
" to the partie offended unto, quha ſall have action
" to perſew therfoir."

7. *Parl. James* 6th, 1581; *Stat.* 117. " Foraſ-
" meikle as ſindrie gude actes hes bene maid anent
" finding of law-borrowes, for preſervation of the
" trewe and obedient ſubjectes from injuſt force and
" violence; and lately, for their greater comfort,
" it was weill ordained, that the paines of law-
" borrowes ſuld be divided betwixt the king and
" the pairtie offended unto: Nevertheleſſe, ſeeing
" the paines of law-borrowes hes extended only in
" time bygane for ſafetie of bodielie harme from
" the perſon of the compleener; the malice of the
" wicked ſa increaſſis, as they ceaſe not, be indirect
" meanes, and hounding-out of limmars, vaga-
" boundes, and uthers not reſponſal, to invade the
" innocent perſones, not onlie in their bodies, but
" to rieve, ſteale, houch, or ſlay their oxen, horſes,
" and other cattel, cut or deſtroy their cornes, or
" to cauſe eate the ſame with beſtial, to hound and
" ſlay their ſcheepe with dogges, boaſt themſelves
" in ſik ſorte as they dare not lie in their awin
" houſes, or to minace their ſervandes to lieve their
" ſervice, quhairthrow their ground may be layed
" waiſt, to the utter wrack and depauperating of
" the innocentes: Quhairfoir, our ſoveraine lord,
" with adviſe of his three eſtaites in this preſent
" parliament, ordainis, that all letters of law-bor-
" rowes ſall be direct in time cumming at the in-
" ſtance of the pairties compleenand, chargeing the
" per-

" perſones compleened upon to finde ſicker ſovertie
" and law-borrowes that the compleeners, their
" wives, bairnes, tennentes, and ſervandes, ſall be
" harmeles and ſkaithles in their bodies, landes,
" takkes, poſſeſſiones, gudes and geare, and on na
" wayes to be moleſted or troubled theirin be the
" perſones compleened upon, nor na uthers of their
" cauſing, ſending, hounding-out, receipting, com-
" mand, aſſiſtance, and rati-habition, quhome they
" may ſtoppe or let, directlie or indirectlie, uther-
" wayes nor be ordour of law and juſtice; under
" great paines, to be modefied be the lordes of
" ſeſſion, or uthers ordinar judges."

11 *Parl. James* 6th, 1587; *Stat.* 86. " It is
" ſtatute and ordained, that caution be found to the
" juſtice clerke and his deputes, that letters of law-
" borrowes in times cumming to be granted ſall be
" dewly execute upon all perſons conteined there-
" in, ather perſonally, or at their dwelling places,
" and be open proclamation at the mercat croces of
" the head burgh of the ſchire quhair the parties
" dwellis, betuixt aucht houres in the morning and
" twelve houres at noone, ſummer and winter, in
" open time of day, in preſence of famous witneſſes
" ſpecially deſigned; and copies affixed upon the
" zettes or doores of the dwelling houſes of the
" perſones conteined therein, with the haill names;
" and an uther on the mercat croce, under the
" paine of twa hundreth markes."

13 *Parl. James* 6th, 1593; *Stat.* 170. " It is
" ſtatute and ordained by our ſoveraine lord and
" the three eſtaites, that in time cumming the
" paines and unlawes of law-burrowes, or for
" none-again-bringing of latters to the juſtice clerke
" and his deputes, or for none-compeirance before
" the juſtice after ſovertie found, ſall bee, for every
" erle or lorde, two thouſand pundes; for every
" great

" great baronne, ane thouſand pundes; for every " free-halder, ane thouſand markes; for every fe- " wer, five hundred markes; for every zeaman- " man, an hundred markes; for every gentleman " unlanded, twa hundreth markes; of ilk perſon " ſummoned to paſs upon aſſize before the juſtice, " ane hundreth markes; and that the juſtice clerke " and his deputes receive ſovertie according to the " ſaidis paines in time cumming and na uther ways, " as they will anſwere upon the dewtie and execu- " tion of their offices: And the ſaids paines of law- " borrowes to be divided equally betwixt the king " and the partie offended unto, conforme to the " act maid upon of before: And that the unlaw " of all perſons arreiſted and not compeirand at the " firſt juſtice aire, over all the realme, in time " cumming, ſhall be twenty pundes."

15 *Parl. James* 6th, 1597. *Stat.* 273. " Our " ſoveraine lorde and eſtates of parliament ſtatuts " and ordains, that the paines of contravention ſall " be paid be the principal party that is charged to " find law-burrowes, albeit he paſſe to the horne " and finde not caution; and gif he find caution, " that baith he as principal, and als his cautioner, " ſall be ſubject to the payment thereof, at the op- " tion of the perſewer, as in all uther pecunial ob- " ligations,"

Mr. *Mc Douall* * obſerves, as to the form of letters of law-borrows, that there is an injunction therein upon the meſſengers, to take the complainer's oath before ſerving them; for the complainer (he ſaith) doth not emit it at taking out of the letters, and therefore the meſſenger is conſtituted judge for that purpoſe. 1 *Mc Douall.* B. 1. Tit. 10. Sect. 157.

* Who was afterwards one of the lords of ſeſſion, under the title of lord *Bankton.*

And if law-borrows are ſuſpected to be maliciouſly inſiſted for; the party againſt whom they are demanded may oblige the raiſer of them to particularize the grounds of his dreading harm. But ordinarily they are granted of courſe; and the meſſenger, before executing them, exacts the oath in general, and in abſence of the other party; but if he is preſent, he may oblige the charger to be ſpecial in his oath before the meſſenger, who in this reſpect officiates as a judge, and may either grant or refuſe to execute the letters, as he ſees cauſe upon adviſing the oath, and is anſwerable for his conduct in that reſpect. *Id.* Sect. 167.

But here it ſeemeth that a diſtinction ought to be made, between letters of law-borrows iſſued by a juſtice of the peace, ſheriff, or other conſervator of the peace, and by the court of ſeſſion. Thoſe inferior judges always require an oath, previous to iſſuing the letters of law-borrows, much in the ſame manner as in the granting of a peace warrant in *England*. But the lords of ſeſſion in their court iſſue letters of law-borrows on petition of the complainant, requiring the ſheriff, or other officer firſt to take the complainant's oath, and then to execute the letter according to the form preſcribed.

The letters of law-borrows iſſued by the juſtices, or ſheriff, require the officer who is to execute the ſame, to apprehend and impriſon the party complained againſt, until he find caution in the ſum ſpecified in the ſaid letters; ſuperſeding execution nevertheleſs for ſuch time as the ſheriff or juſtice thinks proper, after intimation made to him to find ſuch caution. The court of ſeſſion, in their proceſs, order the perſon, in defect of finding caution, to be denounced rebel and put to the horn; which being done, and certified to the court, then they iſſue letters of caption to apprehend and impriſon him until he find caution.

If the party complained of commits any violence upon the complainer, his wife, children, or ſervants, in breach of the ſame; he hath an action of *contravention*, with concourſe of the crown, for one half of the penalties contained in the ſaid letters of lawborrows; the other belonging to the king, on account of breach of the peace. And this action may be brought either on the charge upon the letters of lawborrows, when no caution is found; or upon the bond granted for obedience thereof, when caution is found. *Id.* Sect. 77. *Stair.* B. 4. Tit. 48. Sect. 5.

And there are ſome circumſtances in this matter of law-borrows, which may explain perhaps in ſome particulars our *Engliſh* law concerning the peace. In all our old books before, and during, the reign of King *James* the firſt, the form of the peace warrant purporteth, that if the party charged ſhall refuſe to come before the juſtice, or to find ſufficient ſurety; the conſtable, without expecting any further or other warrant, ſhall cauſe him to be conveyed to priſon. In which reſpect the conſtable is made judge of the ſufficiency of the ſureties. But this (according to the form of the letters of law-borrows) ſeemeth originally to have been, where the juſtice in the warrant did limit and ſpecify the ſum, and allow to the party a reaſonable time to find his ſureties. In which time, if he ſhould not go before the juſtice with his ſureties, then it might be reaſonable for the conſtable to carry him to gaol by virtue of the firſt warrant.

In the old precedents likewiſe, and alſo in the commiſſion of the peace, the requiring of ſureties is limited to two particulars, namely, the fear of bodily hurt to the perſon complaining, or of the burning of his houſes. But Mr. *Dalton*, who lived in the time of King *James* the firſt, intimates his opinion, that if a man be threatned to have his *goods* burned, he may demand ſuch ſurety: And he ſeeth no cauſe

(he ſays) but that a man may crave ſurety of the peace in behalf of his wife or *ſervant* being threatned. The latitude of which opinion perhaps he might have received, from the like inſtitution under that ſame king in his ſeventh parliament of *Scotland*; by which it is required (as is above ſet forth, and the letters of law-borrows import the ſame), that the party ſhall find ſureties that the complainant, his wife, bairns, family, ſervants, and dependents, ſhall be harmleſs and ſkaithleſs kept in their perſon, lands, heretages, goods and gear, good name and reputation, by and thro' the perſon complained of, his wife, family, ſervants and dependents, or otherwiſe of their cauſing, ſending, hounding out, command, reſett, aſſiſtance, or ratihabition, or whom they may ſtop or lett, directly or indirectly, in all time coming, otherwiſe than by order of law and juſtice.

The application, by the law of *Scotland*, of one half of the forfeiture, upon breach of the ſecurity, to the party grieved, is undoubtedly preferable to our *Engliſh* law in that reſpect, which gives the whole to the king; which can be no compenſation for the loſs ſuſtained by the party complaining.—And this conſideration may be extended to the forfeiture of recognizances in almoſt all other inſtances.

Thus the matters ſtood in *Scotland*, upon the foundation of letters of law-borrows only, until the the time of the union of the two crowns under one ſovereign in the perſon of the ſaid *James*, who was the ſixth of that name of *Scotland*, and the firſt of *England*.

But, long before this time, in *England*, (*viz.* at the beginning of the reign of king *Edward* the third), to the aforeſaid *conſervators* of the peace, were added others by the appointment and nomination of the crown, who were ſtiled *juſtices to keep the peace*. And to their office of keeping the peace, in a few years

years afterwards was added another and more important office, namely, that of hearing and determining offences; which is that which they enjoy under the ſecond aſſignment in the commiſſion of the peace. And in the ſame commiſſion, from time to time, the execution of ſeveral ſtatutes or acts of parliament by name was committed to them. Afterwards, in the reign of queen *Elizabeth*, a more general power was given to them, over ſeveral offences mentioned in the commiſſion, without referring to the particular ſtatutes. And ſo it continues to this day. And in every ſeſſion of parliament more and more matters and cauſes are brought under the cognizance of theſe juſtices.

When king *James* the ſixth of *Scotland* as aforeſaid came to the crown of *England*, he found this office in exerciſe here, expreſſed much ſatisfaction therein, and was anxious to introduce the ſame into his kingdom of *Scotland*. And in conſequence thereof, an act was paſſed in his 20th parliament of *Scotland*, *Stat.* 7. Intitled, "An act anent the commiſſioners and juſtice of peace;" which, in the uſual ſtile of adulation to that prince, which occurs in the acts of the parliaments of both kingdoms, enacteth as follows: Foraſmuch as, among the infinite monuments and teſtimonies of his majeſty's true piety, ſingular wiſdom, ſincere zeal to juſtice, and fatherly care of his people, the eſtates of this kingdom have not found any bringing more deſerved commendation and permanent renown to his majeſty, or greater profit, quietneſs, and comfort to his ſubjects, than his conſtant perſeverance in his moſt religious and prudent reſolution to extirpate the ungodly, barbarous and brutal cuſtom of deadly feuds; which, by the inveterate abuſe of many by-paſt ages, was become ſo frequent in this realm, as that the ſubjects of greateſt rank and quality, upon every naughty occaſion of baſe and unworthy controverſies of neigh-

bourhood, for turves, fold-dykes, furres or marches of lands, fooliſh words or drunken diſcords between their meaneſt ſervants and dependents and any other in the country, did ſo readily embrace the protection of their unjuſt and unneceſſary quarrels, as did many times involve themſelves and their whole friendſhip in moſt bloody and mortal troubles: And the corruption was ſo univerſal, that the greateſt part prevailing againſt the beſt, that cruel barbarity hath had both continuance and daily increaſe; until his majeſty, bending the excellent wiſdom and rare graces of his royal mind (wherewith God has endowed him more abundantly than any king that ever did reign in this iſland) againſt that godleſs, unnatural, and beſtial cuſtom, did deviſe and eſtabliſh a moſt godly, juſt and prudent law and ordinance for the courſe to be obſerved, for removing upon equitable and juſt conditions the deadly feuds aforeſaid. [Then, after ſetting forth the benefits which had accrued from that law againſt deadly feuds, the act proceeds.] And further to prevent the reviving of the ſaid feuds, his majeſty and eſtates aforeſaid do ſtatute and ordain, that in every ſhire within this kingdom, there ſhall be yearly appointed by his majeſty, ſome godly, wiſe and virtuous gentlemen, of good quality, moyen, and report, making reſidence within the ſame, in ſuch number as the bounds of the ſhire ſhall require, to be commiſſioners for keeping his majeſty's peace; to whom his majeſty with advice of the lords of his privy counſel, ſhall give power and commiſſion, to overſee, try, and prevent all ſuch occaſions as may breed trouble and violence amongſt his majeſty's ſubjects, or forcible contempt of his majeſty's authority and breach of his peace. And to command all perſons in whom they ſhall ſee manifeſt intention to make trouble or diſorder, either by gathering together of idle and diſorderly perſons, or by publick bearing or wearing of piſtolets or other forbidden weapons,

weapons, and ſuch other riotous and ſwaggering behaviour; to bind themſelves, and find caution, under competent pains, to obſerve his majeſty's peace, and for their compearance before his majeſty's juſtice or lords of his privy council, to underly ſuch order as ſhall be found convenient for puniſhing their tranſgreſſions, or ſtaying of troubles and enormities. And if need ſhall be, to require the dutiful and obedient ſubjects of the ſhire, to concur with them in preventing all ſuch contempts and violences, or for taking or warding of the wilful and diſobedient authors, committers, and foſterers of theſe crimes and diſorders, under ſuch competent arbitrary pains, as his majeſty and lords of his privy council ſhall appoint for the offenders.

And unto ſuch commiſſioners appointed as aforeſaid, the king gave ſpecial inſtructions for the regulation of their conduct: Which inſtructions, in another act, in the twenty ſecond parliament of that ſame king, *Stat.* 8. intitled, "Anent the juſtices for keeping of the king's majeſty's peace, and their conſtables," are ſet forth particularly, and enacted to be in force by authority of parliament Which, with ſome ſmall alterations made by ſubſequent ſtatutes, are as follows:

I.

"The commiſſioners and juſtices of peace, at their firſt admitting upon the bench, ſhall take the Oath following, *viz.* I, as one of the commiſſioners and juſtices of peace within the ſhire of —— according to my knowledge, wit, and power, ſhall do equal right both to rich and poor, conform to the laws, ſtatutes, and cuſtoms of the land; and that I ſhall not be of counſel with any perſon in any quarrel or matter depending before me; and that I ſhall every quarter keep the ſeſſions, or oftner as I

ſhall be required, not having any juſt impediment in the contrair; and ſhall faithfully and truly diſcharge my duty as a juſtice of his majeſty's peace, and ſhall leave nothing undone that may tend to the preſervation of the ſame: So help me God.

II.

Any one juſtice ſhall have power, upon complaint of any perſon being threatned and fearing to be wronged, to bind the party complained upon, under ſuch a pecunial ſum, to keep the Peace, as he ſhall think fitting; as alſo to commit him until ſurety be found by him: the ſaid complainer always giving his oath before the juſtice, that he hath juſt cauſe to dread him harm. And albeit no perſon complain, yet if the juſtice be credibly informed of appearance of trouble betwixt any parties, he ſhall bind them to the peace in manner foreſaid; except the parties declare upon their conſciences, that neither of them bear any grudge to other. And all ſuch bonds ſhall be kept and recorded by him; and he ſhall make delivery of the ſame, to the clerk of the peace at the next ſeſſions, to be kept and regiſtrate by him.

III.

If any perſon, being charged to make his appearance before a juſtice of peace, ſhall refuse or delay, without cauſe; if the party be a landed gentleman, whoſe rents exceed ten chalders of victual, or 1000 merks of ſilver, then the juſtice (whoſe command is contemned) ſhall inform the ſame to ſome of his majeſty's privy council, to the effect the party of the quality foreſaid may be called and fined for his diſobedience: And if the diſobeyer be of a meaner degree, the juſtice of peace ſhall hereby have power to command the next conſtable, or in abſence of

of a conſtable, his own ſervant, or any other perſon having a warrand in writing ſubſcribed by the ſaid juſtice of peace, with aſſiſtance of the country, to bring any ſuch party before him.

IV.

If either the Sheriff or baily ſhall condemn any perſon in blood-wyt; or otherways convict him in any pain proper for him to impoſe; the juſtices ſhall have no power of new to fine that offender for that offence. But if they ſhall find him not condignly puniſhed, in regard of the offence committed by him; they ſhall then inform his majeſty's council thereof, that they may take order therewith. And if there be no ſatisfaction made by the ſheriff or baily to the party offended, the juſtices may modify a reaſonable ſatisfaction to the party offended, he purſuing therefore before them: and if they find the ſatisfaction decerned by the ſheriff or baily, in favour of the ſaid party offended, not condign, nor anſwerable to the offence and wrong ſuſtained; then they ſhall alſo inform his majeſty's council thereof, that they may take order therewith as appertaineth. And if either ſheriff or baily or their deputes, by colluſion with the delinquent, ſhall ſuffer any perſon guilty to be quitted or cleared by an aſſize; the party once cleared is not to be brought further in queſtion before the juſtices; but, upon their information, the judges are to be called, cenſured, and ſeverely puniſhed, by his majeſty's council.

V.

The ſaid juſtices ſhall hereby have power to proceed upon all perſons committing Riots, and breaking the king's peace, under the degree of noblemen, prelates, counſellors, and ſenators of the college of juſtice; and to puniſh and fine, according to the quality

quality of the crime, and the eſtate of the offender. And if any of the ſaid perſons, being charged to compear before the ſaid juſtices, ſhall diſobey, (the ſummons being indorſed, the lawful citation verified, and fact proven); the juſtices ſhall puniſh and fine according to the quality of the crime and eſtate of the offender. And for the more clear determination of the order which ſhall be kept by the ſaid commiſſioners, in the deducing of any ſuch proceſs; our ſovereign lord, with advice of his eſtates, declareth, that it ſhall be lawful to the ſaid juſtices, whenſoever they have any occaſion to move any action againſt parties, for committing any like fact or riot, to refer the firſt ſummons to the parties oaths of verity, failing of other lawful probation; who being perſonally ſummoned by that firſt citation, ſhall be holden as confeſſed, and decreet to be pronounced againſt him, conform to the libel and ſummons. And if he be not perſonally ſummoned by the firſt citation, the ſaid commiſſioners ſhall be holden to cauſe ſummon him of new again, by a ſecond ſummons at his dwelling place. Which two citations ſhall be as ſufficient to infer decreet and ſentence upon the libel againſt him, as if he were apprehended perſonally. And which ſentence given after the manner and form of probation above-written, his majeſty, with advice aforeſaid, authorizes and ſuſtains, as good and lawful in themſelves. And as concerning thoſe perſons of higher degree, the ſaid commiſſioners ſhall uſe all their power for preventing and ſtaying of the riots, commanding the attempters in his majeſty's name to ceaſe, and to find caution for keeping of the peace, and for their compearance before his majeſty's council. And if any perſon being charged to find caution, and refuſe it, or delay to do the ſame, and in the mean time contraveeneth the ſaid charge, by committing of ſome deed betwixt the time of the charge and finding of the caution; nevertheleſs he

ſhall

ſhall be anſwerable for the pain, from the date of the charge, like as if caution had been then found.

VI.

THE ſaid commiſſioners ſhall put his majeſty's act of parliament in due and full execution againſt wilful beggars and VAGABONDS, ſolitary and idle men and women without calling or trade, lurking in alehouſes, tied to no certain ſervices, repute and holden as vagabonds; and againſt thoſe perſons who are commonly called Egyptians: And they ſhall puniſh and fine their reſetters, and ſetters of houſes to them accordingly; by ſuch competent pains as is proper for them to injoin.

VII.

THE ſaid commiſſioners and juſtices of peace are hereby authorized and impowered, to give order (as they ſhall think moſt convenient, and with leaſt grief to the ſubjects) for mending of all HIGHWAYS and paſſages, to or from any mercat-town or ſea-port within that ſhire; and ſhall call before them all ſuch perſons, as ſhall ſtrait theſe paſſages; or otherways by caſting of ditches or fulſies thro' the ſame, ſhall make theſe highways noiſome and troubleſome unto paſſengers; and ſhall puniſh and fine them, according to the quality of their offence. And to the effect it may be known of what breadth all common highways ſhould be to mercat-towns; our ſovereign lord, with advice aforeſaid declareth, that the ſame ſhould be of twenty foot of meaſure in breadth at the leaſt; and where any are of larger breadth, they ordain the ſame ſo to remain unaltered or ſtraitned; and that the ſaid juſtices maintain the ſame, with all other ways from any town in the pariſh to the pariſh churches, in the eſtate as they are. And where they find any neceſſity of other ways, from any town in the

the parish to parish churches; they shall inform his majesty's secret council thereof: who shall give them (after sufficient information) their direction thereanent; according whereunto, they shall be holden to proceed. And if any person refuse to concur for mending of highways and passages; the said justices shall have power to censure and punish them, according to their discretion: with provision always, that if in their proceedings herein they use such severity or rigour, as may move just complaints against them; they shall be censured therefore by his majesty's secret council as appertaineth.

VIII.

The said justices shall put his majesty's acts of parliament to execution, against cutters and destroyers of planting, green Wood, orchards, gardens, haynings; breakers of Dove-houses and Cunninghares; stealers of Bees and bee-hives; users of unlawful Games with setting dogs; slayers of red and black fishes and smolts in forbidden time; fowlers fowling in other mens lands; makers of muirburn and mossburn; setters of crooes and nets in waters and dams; having and keeping of crooes and yairs in forbidden time; and shall proceed against them accordingly. And for their better warrant to proceed in the premisses, it is his highness's pleasure, that commissions be granted to the said justices of peace, to try and punish the violators of the said acts; in the trial whereof, they shall proceed by witnesses, or by oath of party; and the punishment to be inflicted by them, shall be a pecunial sum, answerable to the circumstance of the offence, and quality of the offenders: with special provision, that their censures and punishments shall extend against none, but those against whom by privilege or their instructions they may lawfully proceed; and also with provision, that the said commissions be

be not extended to any perſons, who ſhall be arreſted and conveened for the ſaid crimes, before any other ordinary judge. It is alſo provided, that the ordinance and power contained in this article, ſhall no ways be prejudicial to any other commiſſions or rights whatſoever granted to other parties, whereby they have power to proceed and cenſure the crimes and offences abovewritten.

IX.

ITEM, They ſhall inform the king's majeſty's council, and his highneſs's treaſurer, or advocate, at the leaſt once every year, of FORESTALLERS and REGRATERS of mercats; that order may be taken with them, conform to the acts of parliament.

X.

IT ſhall not be leaſome to any HOSTLAR, to reſet any maſterleſs men and rebels at the horn, any vagabonds, or other perſons guilty of known crimes, or uſing ſtouth and reif; under the pains underwritten: To wit, 40 *s.* to be incurred by them for the firſt fault, 4 *l.* for the ſecond, and 10 marks for the third; together with the loſing the liberty of brewing. The incurrers of which pains ſhall be puniſhed according to the order aforeſaid, by the barons and maſters of the ground whereupon the hoſtlar dwelleth, within the ſpace of 15 days after the committing of the fact. And if the ſaid barons and heritors neglect to do the ſame within the ſaid ſpace; it ſhall be lawful to the ſaid juſtices, to purſue and fine the delinquents in their courts, according to the pains aforeſaid, and to uplift the ſame from them; without prejudice always of whatſoever acts made againſt the ſaid hoſtlars in baron court books under whom they dwell, bearing any higher pain than is ſet down in this abovewritten act; and

alſo without prejudice of all action, criminal or civil, competent of the law, againſt the ſaid hoſtlars, in caſe they be under the danger thereof; which ſhall not be taken away by any puniſhment ſet down and to be inflicted conform to this act.

XI.

ITEM, They ſhall inform the king's treaſurer and advocate, of breakers and contraveeners of the acts of parliament made againſt MALT makers; that the tranſgreſſors and contraveeners thereof may be puniſhed, conform to the tenor of the ſaid acts.

XII.

THEY ſhall ſet down order in the country, for governance in time of PLAGUE; and ſhall puniſh ſeverely the diſobeyers of the order appointed by them, according to the quality of the delinquent.

XIII.

THEY ſhall appoint at the quarter ſeſſions to be kept in *Auguſt* and *February*, the ordinary hire and wages of labourers, workmen, and SERVANTS; and who ſhall refuſe to ſerve upon the price ſet down by them, ſhall be impriſoned, and further puniſhed at their diſcretion. And to the effect ſervants may be the more willing to obey the ordinances to be made by the ſaid juſtices, for the ſaid fees; the ſaid juſtices ſhall have power to decern, and compel the maſter to make payment of the fees appointed by their ordinance, in caſe the ſervants pleaſe rather to purſue for the ſame before them than any other judge.

XIV.

XIV.

THE ſaid juſtices ſhall take notice in all ſheriffdoms, where there are any GOALS and priſon houſes, within any burgh; that the ſame may be kept up, and not ſuffered to decay or become ruinous: And if there be any ſhire, where there is not any gaol or priſon houſe; they ſhall inform his majeſty's council thereof, that they may appoint and give order for building of one within the head burgh of the ſhire; and according to the directions to be given thereanent, the juſtices ſhall be holden to proceed.

XV.

AND becauſe there may be a great many of PRISONERS apprehended and committed, who having no means of their own for their maintenance and entertainment, will otherwiſe famiſh and ſtarve before they can come to their trial, who nevertheleſs in regard of their crimes committed can no ways be put under ſurety, or otherwiſe in faults of leſs conſequence are unable to find ſufficient caution to be made forthcoming and anſwerable at the next ſeſſion; therefore it ſhall be lawful to the ſaid commiſſioners and juſtices, at their quarter ſeſſion, to rate every pariſh for a weekly proportion, for the entertainment of thoſe poor priſoners; provided they do not exceed the ſum of 5 *s. Scots* money at the moſt, nor under 1 *s.* at the leaſt. Which ſum ſhall be uplifted for that uſe, by the miniſter or reader who ſhall ſerve at every pariſh, from ſuch deacons who ſhall be appointed to collect the ſame. And the ſaid ſums to be delivered by the conſtable of the pariſh, at the quarter ſeſſions, in preſence of the whole bench there conveened, to ſuch perſons as the ſaid juſtices ſhall truſt therewith; and who, accordingly, ſhall make due account in paying the gaolers ſuch

ſuch rates as ſhall be allowed for the poor priſoners, and making the reſt forthcoming for ſuch uſe and intent of the like nature, as the ſaid juſtices ſhall appoint.

XVI.

ALL magiſtrates of burghs, and KEEPERS of any gaols or priſons, ſhall receive into their priſons, all ſuch perſons as either ſhall be brought by conſtables, or ſent unto them by warrants under the hand of any one juſtice of peace; the ſaid juſtices cauſing ſatisfie for their entertainment. And if any magiſtrates, or their gaolers, ſuffer any perſons, committed by the juſtices to their priſons, to eſcape; they ſhall be condignly puniſhed therefore, at the diſcretion of his majeſty's council.

XVII.

ITEM, Our ſovereign lord, with advice aforeſaid, ordains the ſaid commiſſioners to ſet a price upon CRAFTSMENS work, and upon the ordinars of penny-bridals; together with the price of SHEARERS fees: and to puniſh the contraveeners, as appertaineth.

XVIII.

THEY ſhall cauſe ſufficient ſingle and double ALE to be brewed in every ſhire; and ſhall appoint viſitors to that effect, with conſent of the baron and overlord of the ground: They ſhall ſet down acts againſt notorious and common DRUNKARDS, and impoſe ſums upon the contraveeners, according to their qualities and deſerts.

XIX.

XIX.

Our ſovereign lord, with advice aforeſaid, declareth, that THREE juſtices of peace ſhall be a full number and ſeſſion; to decide in matters occurring betwixt the the four quarter ſeſſions.

XX.

Also declares, that no letter of caption ought to be granted againſt the ſaid juſtices, for apprehending of Rebels; except they be found ſubject to do the ſame, by poſſeſſing of ſuch other offices and places, to which the obedience and putting to execution of any ſuch charges doth belong.

XXI.

There ſhall be but one Weight and Measure throughout the kingdom: And the juſtices aforeſaid, ſhall confer the ſame with the ſtandard; and where they find a diſconformity, they ſhall inform the king's majeſty's council thereof, that they may take order therewith as appertaineth.

XXII.

The ſaid juſtices ſhall be holden to give command and direction to their conſtables, to apprehend any ſuch perſon, who ſhall be found contemptuouſly to have diſobeyed the cenſures of the Church, they being lawfully required to do the ſame.

XXIII.

The ſaid juſtices of peace, as well to burgh as land, ſhall convene and be preſent at the Quarter Sessions of the ſhire where the burgh and land lieth;

lieth; give their oath to the bench at their admiſſion; make their record; and make payment of the fines intromett with by them, as juſtices of peace of that ſhire, to their collector.

XXIV.

They ſhall appoint a ſufficient COLLECTOR, for uplifting the fines and penalties, which they have power to impoſe upon an offender; and are to take caution of him for making due account.

XXV.

THEY ſhall have, during the time of ſeſſions, for every day of their abode (ſo it do not exceed the number of three days at the moſt at one time) allowed to every one of them 40 *s. Scots* money, daily to be PAID and uplifted by the collector of the fines. But neither earl, lord, biſhop, privy counſellor, or ſeſſioner, ſhall have any allowance. And all ſuch juſtices as have the benefit of that allowance and ſhall be abſent from every ordinary quarter ſeſſions, or otherwiſe when he is required lawfully by the CUSTOS ROTULORUM to any particular meeting, ſhall incur the penalty of 40 *l. Scots* money, not being lawfully excuſed, and the excuſe allowed by the reſt of the juſtices there aſſembled.

XXVI.

THE lords of ſeſſion ſhall direct general and ſummar charges of HORNING and POYNDING, at the inſtance of the collector appointed in every country, for ingathering all fines and penalties whatſoever incurred, upon a ſimple charge of 15 days; and no ſuſpenſion ſhall be granted thereof, but upon conſignation of the ſums contained in the ſentences, and

and by finding caution for payment of the charges at the modification of the ſaid lords.

XXVII.

THE ſaid commiſſioners, at the end of every quarter ſeſſions, ſhall ſend to his majeſty's council, a CATALOGUE of all ſuch perſons as they have either committed, or otherways put under ſurety, with a ſhort abbreviate of the cauſe thereof; to the effect, that thereupon the council, as they ſhall think expedient, may return to them againſt their next ſeſſions, or to the *cuſtos rotulorum* in the mean time, their further directions.

UNTO theſe were added, by the ſtatute of *Charles* the ſecond, (hereafter mentioned) theſe following particulars:

XXVIII.

THE juſtices, at their firſt ſitting, together with the oath of juſtice, ſhall take the following OATH of allegiance:

I, for teſtification of my faithful obedience to my moſt gracious and redoubted ſovereign, *Charles*, king of *Great Britain*, *France*, and *Ireland*, defender of the faith, &c. affirm, teſtify, and declare, by this my ſolemn oath, that I acknowledge my ſaid ſovereign, only ſupreme governor of this kingdom, over all perſons, and in all cauſes; and that no foreign prince, power, or ſtate, nor perſon, civil or eccleſiaſtick, hath any juriſdiction, power, or ſuperiority over the ſame: And therefore I do utterly renounce and forſake all foreign juriſdictions, powers, and authorities; and ſhall, at my utmoſt power, defend, aſſiſt, and maintain his majeſty's juriſdiction aforeſaid, againſt all deadly; and ſhall

never decline his majesty's power nor jurisdiction; as I shall answer to God.

XXIX.

THE justices of peace, in every respective shire, shall meet and conveen together, four times in the year; *viz.* on the first *Tuesday* of *May*, the first *Tuesday* of *August*, the last *Tuesday* of *October*, and the last *Tuesday* of *March*. In which SESSIONS, they shall administer justice to the people, in things that are within their jurisdiction; and punish the guilty for faults and crimes done and committed in the preceeding quarter: and by mutual and conjunct advice, make and rectify ordinances for the fees of servants, shearers in harvest, and other labouring men; appoint prices for all handycrafts; elect or continue constables or other officers; and dispose of the fines and mulcts, for payment of the constables, clerks, and other officers fees, and employ the remanent on such necessary and pious uses, as they shall find most expedient; and shall have power to continue the said sessions, or to adjourn the same, to such days and places as shall be most convenient.

XXX.

THE said justices shall put in execution, all acts of parliament made for punishing all persons whatsoever, who shall CURSE or profanely SWEAR, or shall be mockers or reproachers of PIETY, or the exercise thereof; and shall require and levy upon every offender the several penalties following: *viz.* of a nobleman 20 *l.*; each baron 20 merks; each gentleman, heritor, or burgess, 10 merks; each yeoman 40 *s.*; each servant 20 *s. Scots* money; each minister in the fifth part of his year's stipend, without prejudice to other proceedings against any such minister for the same. And in any of all the cases before

before ſpecified in this inſtruction, the ſaid juſtices ſhall put in execution all ſuch laws as for corporal puniſhments, as have any proviſions mentioned in them for ſuch caſes. And in caſe of the inabilities of the parties delinquents to pay the forementioned in this inſtruction; the ſaid juſtices ſhall put in execution ſuch laws as for corporal puniſhments, as have any proviſion mentioned in them for ſuch caſes. And that the wives delinquents ſhall be puniſhed according to the quality of their reſpective huſbands; and that their huſbands be liable for the payment of their wives fines reſpectively, in manner abovementioned, *toties quoties* for each fault. And all others whatſoever, not particularly herein nominate, are to pay in proportion to their reſpective qualities and degrees. All and ſundry which penalties ſo to be levied, are to be diſpoſed of as followeth: *viz.* one half to pious uſes, in the ſame pariſh where the offenders live, or the offence hath been committed; and the other half to be divided in two equal parts, one part whereof to be given to the informer and proſecutor, and out of the other half to ſatisfy the conſtable or other perſons who ſhall be employed for bringing the perſons accuſed to juſtice, and the remainder to be diſpoſed of to pious uſes, or to ſatisfy the conſtables for their travel and ſervice in other parts of their office, according as the juſtices ſhall think fit.

XXXI.

The ſaid juſtices are to put in execution, the acts of parliament made for the puniſhing of all perſons that ſhall be found guilty of the ſin of Fornication; and that they levy, or cauſe to be levied, the ſeveral pecunial ſums therein mentioned; *viz.* for each nobleman, for the firſt fault 400 *l.* each baron 200 *l.* each other gentleman, and burgeſs, 100 *l.* every other perſon of inferior quality 10 *l.*

Scots money; and that these penalties shall be doubled *toties quoties*, according to the relapses and degrees of the offence, and quality of the offenders. And that the said penalties shall be levied, not only of the man, but of the woman, according to her quality, and the degree of her offence, the one without prejudice of the other. The said penalties to be levied and disposed, in like manner as for cursing, swearing, and profaneness, as is abovementioned.

XXXII.

That the justices shall put the acts of parliament in execution, for the punishing of all persons found guilty of the sin of Drunkenness or excessive drinking, especially under the names of healths; or haunting taverns or alehouses after ten of the clock at night, or at any time of the day, except in time of travel, or for ordinary refreshments: As also against the keepers of the taverns or alehouses, that shall sell the drink unto them. Which penalties in the said several acts contained, the said justices are to levy or cause to be levied upon the said delinquents; and the said penalties are to be disposed of by the said justices, in like manner as aforesaid.

XXXIII.

The said justices shall put in execution, all acts of parliament made against such persons as shall profane the Lord's day; and require or levy the penalties therein contained: which penalties aforesaid the said justices are to dispose of in like manner as aforesaid.

XXXIV.

XXXIV.

And at what time and whenſoever one ſhall accuſe another perſon or perſons, to be guilty of treaſon, murder, or other felony, blaſphemy, inceſt, or any other heinous crimes; in ſuch caſes, the ſaid juſtice or juſtices ſhall forthwith cauſe ſuch perſon or perſons to be apprehended; and after inquiry made in the cauſe, the ſaid juſtice or juſtices, if they find cauſe, ſhall commit the offender to priſon, or take ſufficient Bail, if the caſe by the law be bailable; and ſhall take the information of the party accuſing upon oath, and bind him to proſecute; and ſhall take the teſtimony or depoſition of the witneſſes likewiſe upon oath, and bind them to give an evidence; and ſhall alſo take the examination of the party accuſed. All which recognizances, informations, depoſitions, and examinations, the ſaid juſtice or juſtices ſhall certify to the next quarter ſeſſion, aſſizes, or criminal courts reſpectively; to the end that juſtice may proceed againſt them according to the law.

XXXV.

And if any nobleman, baron, or baily, or any in their names, having power, ſhall acclaim the Right of Jurisdiction, to proceed againſt any delinquent apprehended by a conſtable for any capital crime; then, and in that caſe, any of the juſtices ſhall receive ſecurity of the ſaid party who required the defender to be delivered to him, that juſtice ſhall be duly miniſtred; and then ſhall cauſe delivery of the ſaid perſon to be made to him: And the ſaid juſtice of peace, at the next ſeſſion, ſhall certify the whole matter to the bench; to the effect they may inquire, whether juſtice hath been

accordingly miniſtred, and if any fault be found, to advertiſe his majeſty's council, that order may be taken therewith.

XXXVI.

THE ſaid juſtices ſhall, twice in the year, at the firſt of *December* and the firſt of *June*, take up a liſt of the POOR in every pariſh, within burgh, or land. Into which number there ſhall no perſons be received, who are any way able to gain their own living. And to the effect theſe poor may no longer be neceſſitated to ſeek their living, with ſuch hardſhip and difficulty, by ſcandalous vaguing as hitherto they have been in uſe of; the juſtices ſhall appoint two or more perſons of good fame and quality in every pariſh to be overſeers of the poor in each pariſh aforeſaid; and to authorize the ſaid overſeers to make due trial and examination of the condition and number of ſuch poor, aged, ſick, lame, and impotent inhabitants of the ſaid pariſh, who (of themſelves) have not to maintain them, nor are able to work for their living; as alſo of all orphans and other poor children within the ſaid pariſh, who are left deſtitute of all help. And the ſaid overſeers are to inliſt and inroll all ſuch perſons, and to provide them ſuch a convenient houſe for their dwelling, either apart or together, as they ſhall judge requiſite. And upon conſideration had, what the neceſſary maintenance will extend to weekly; the ſaid overſeers are to call for the collections of the ſaid pariſh, or other ſums appointed for the maintenance of the poor thereof: And the perſons who have the ſaid ſums in their hands, are hereby required to deliver the ſame to the ſaid overſeers; and their receipts under their hands ſhall be their ſufficient diſcharge. Which ſum ſo received, the overſeers are to diſpoſe proportionably to the ſeveral poor people aforeſaid, according as they ſhall find their neceſſities to require.

quire. And the ſaid overſeers are to take due trial of the good behaviour and carriage of the poor perſons liſted and inrolled as aforeſaid; that if any of them, being ſo provided, ſhall go abroad to beg, or otherways miſcarry themſelves, or ſhall refuſe (being able) to work any manner of work that they are able to perform, in ſuch caſes the ſaid overſeers are to acquaint the ſaid juſtices therewith; who ſhall appoint ſuch puniſhments for the firſt fault, as in their judgments they ſhall find requiſite; and if they ſhall continue in ſuch miſcarriages, they are to be holden and repute as vagabonds, and ſo to be proceeded againſt according to the law in that caſe provided. And to the end that there may be an exact performance of the premiſſes; the ſaid juſtices are hereby required, to call before them the ſaid overſeers once in every ſix months, or oftner if they ſhall think expedient, to give an account upon oath of the whole ſums received by them, and to produce the rolls of the ſaid poor, together with an account of what money they have received any otherways for the uſe of the ſaid poor; and after due conſideration of the charge, together with the diſcharge thereof, to approve, allow, or diſallow the ſame, as ſhall be found juſt; and the ſaid juſtices are to take due trial and examination, how the ſaid overſeers have diſcharged their truſt. And in caſe of the refuſal of any of the ſaid overſeers, nominate and elected as aforeſaid, to accept the ſaid office; or, having accepted, ſhall be found negligent therein; or ſhall refuſe or delay to give an account of their intromiſſions, when required as aforeſaid; or to deliver what money ſhall be found reſting in their hands, undiſpoſed of, at the end of the year, unto ſuch new overſeers as ſhall be appointed; in ſuch caſes, the offenders ſhall incur the penalty of 20 *l. Scots*, to the uſe of the poor; and ſuffer ſuch further cenſure, as the ſaid juſtices, at their quarter ſeſſions, upon conſideration had of their fault, ſhall ſee meet to impoſe.

NEXT follow the inſtructions, anent CONSTABLES.

I.

OUR ſovereign lord, with advice of his eſtates, finds and declares that the conſtables are to be made *choice* of, by the commiſſioners and juſtices of peace, in their quarter-ſeſſions throughout the whole country, two at leaſt in every pariſh, or more, according to their diſcretion, having conſideration of the quality thereof: In great towns likewiſe, not being cities nor free burghs, they are to appoint a number of conſtables proportionably to the greatneſs thereof. But in all burghs regal, and free cities, the conſtables are to be choſen by the magiſtrates of the ſame. And they are to endure and to be changed from ſix to ſix months. And who ſhall refuſe to accept the charge, and not to give his oath for dutiful execution thereof, ſhall be impriſoned, and fined at the diſcretion of the juſtices of peace at their next ſitting.

II.

FOLLOWETH the *oath* to be taken by the conſtables:

I do ſwear, that I ſhall faithfully and truly diſcharge the office of conſtabulary, within the pariſh of —— induring the time appointed to me; and ſhall not, for favour, reſpect, or fear of any man, forbear to do what becometh me in the ſaid office: And above all things, I ſhall regard the keeping and preſerving of the king's majeſty's peace; and ſhall, at every quarter ſeſſion and meeting of juſtices, give true and due information of any breach which hath been made of his majeſty's peace, within the bounds of my commandement; and ſhall no way hide, cover, nor conceal the ſame, nor any of the proofs and evidences which I can give for the clearing and proving thereof: So help me God.

III.

ALL the conſtables, or at leaſt one of every pariſh intruſted with power to anſwer for the reſt within the ſaid pariſh, ſhall *attend at every quarter ſeſſion*, there to give information of all ſuch breaches of the peace and other miſdemeanors, as have happened within their bounds ſince the preceeding ſeſſions, and have come to their knowledge; and ſhall no way hide, cover, nor conceal the ſame, nor any of the proofs and evidences which they can give for the clearing and proving thereof; and otherways to give the bench further information in any thing wherein they ſhall be required; and to receive from the ſaid juſtices, at the end of the ſeſſion, ſuch order and direction, as they then ſhall injoin and appoint.

IV.

EVERY conſtable in their reſpective pariſhes, ſhall apprehend any ſuſpicious perſons who are *night-walkers*, and cannot give a good account of themſelves, and carry them to the next juſtices of peace, to find caution for their good behaviour, or otherwiſe be committed to priſon: And the ſaid conſtable or conſtables ſhall ſtay and arreſt all vagabonds, ſturdy beggars and Egyptians; and carry them before ſome juſtice of peace, who ſhall take order for their committing to priſon, or other puniſhments, according to the ſtatutes of parliament.

V.

EVERY conſtable in their reſpective pariſhes, ſhall arreſt all *idle perſons*, who they know to have no means to live upon, and will not betake themſelves to any labour, trade or occupation, and ſhall carry them before ſome juſtices of peace; who, after examination, ſhall either commit them to priſon, or take ſurety of them for their appearance at the next quarter ſeſſion.

VI.

ALL conſtables, in their reſpective pariſhes, ſhall *apprehend* every perſon or perſons, that ſhall be guilty and capable of ſlaughter, murder, theft, or any other capital crime whatſoever; and ſhall require his neighbours to aſſiſt for ſafe conveying of ſuch perſon or perſons, to the next juſtice of peace; who ſhall commit him or them, or take ſurety according to the inſtructions given to the juſtice of peace in ſuch like caſes: And if any perſon or perſons ſhall refuſe or delay to aſſiſt the ſaid conſtable or conſtables, in executing his or their offices; ſuch perſons, for refuſing or delaying, ſhall be imprifoned, or otherwiſe puniſhed by the ſaid juſtices at their ſeſſions.

VII.

ALL conſtables ſhall arreſt any perſons, not being in his majeſty's ſervice, who ſhall be found wearing of *hagbuts*, *guns*, or *piſtols*, in any ſort; and ſhall carry them before ſome juſtice of peace, who is either to take ſecurity for their appearance the next quarter ſeſſion, or commit them priſoners till they do the ſame; unleſs they be licenſed from the council, or ſome impowered from them to give ſuch licences.

VIII.

IF any party complain to a conſtable, that he is *threatned* by another; then ſhall the conſtable apprehend the threatner, and carry him with the party complainer before the next juſtice of peace; and if he refuſe to go, then ſhall he carry him to priſon.

IX.

UPON the appearance of any *fray* or ſtir betwixt parties; the conſtable ſhall require the aſſiſtance of his neighbours, for ſundering of the parties: And if there be any harm done to the conſtable, or any of

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the assistants, by them who made the fray; they shall be punished by the justices at the next session.

X.

When any person or persons have made a fray, and then *flee* to an house; the constable or constables may follow to the house, [and require the master or keeper thereof] to open the doors; which if he or she shall refuse, he shall take notice of the master or keeper of the house, and require witnesses thereon. And albeit the delinquent shall flee further, without the bounds of the constable's charge; yet may the constable follow, and apprehend him in a fresh pursuit, and crave concurrence of the country for that effect.

XI.

The constables in every parish shall execute all such *precepts* and *warrants*, as they shall from time to time receive from the justices of peace.

XII.

And that the said constables may have *satisfaction* for their travels and pains; our sovereign lord, with advice aforesaid, ordains the said justices to give up particular notes in writing, to the auditors of his majesty's exchequer, of the fines in brought to them; that out thereof, such measure and satisfaction may be appointed and given to the said constables, and also to the clerks of the peace, as may recompense their travels. Wherein if it shall be found, that the said fines shall not be sufficient; the said lords of his highness's chequer shall appoint such further satisfaction to them, as in their discretion they shall think their labours and diligence do deserve, and cause them to be paid off the same.

AND NOTWITHSTANDING of this abovewritten act, and all the particulars aforesaid contained in the same; our sovereign lord, with advice and consent of his said estates, statutes, decrees, and declares, that the erection of the said commissioners and justices of peace, and grant of jurisdiction and privileges to them, and the making or approbation of the particular acts abovewritten, introduced in their favours, or any thing therein contained, shall not be in any sort derogatory or prejudicial to the rights, privileges, and liberties, granted and bestowed by his majesty or his highness's royal predecessors heretofore, to any of his majesty's subjects, of whatsoever estate or quality, from the highest to the lowest: But declares, that the said rights, privileges, and liberties shall remain in their own integrity, safe, intire, unhurt, or unprejudiced by the premises, or any thing expressed in the said articles and every one of them, and are holden as especially reserved and excepted out of the same. And lest this abovewritten reservation should seem altogether to destroy the power granted to the said justices, or should beget controversy betwixt them and any other having right and liberty of jurisdiction as said is; our sovereign lord, with advice aforesaid, for removing of all question which may arise betwixt them thereanent, declares, that it shall not be lawful nor permitted to the said justices, to make any citation of parties before their courts, till the expiring of the space of fifteen days after the committing of the fact for the which the committer is to be conveened: At the compleat out-running of which space, if any having power and jurisdiction as said is, hath omitted and neglected to use and exerce the privilege and liberty of their right and power; it shall then be lawful to the said justices, to make citation, and to proceed against the parties, according to the power and authority given to them by his highness with advice

afore-

aforesaid, and conform to the particular articles abovewritten in all points, and no otherways.

WHICH all and sundry the premisses, our sovereign lord, with advice and consent aforesaid, ratifies and approves in all points, in manner as the same purports; and gives unto them the strength and force of acts and ordinances of parliament, and ordains execution to pass upon the same as effeirs."

SEVERAL of the large powers given to the justices, and to constables, in the aforesaid instructions, appear to have been copied almost verbatim from the *English* books concerning the office of a justice of the peace in those arbitrary times; which, tho' in *England* they would now perhaps be thought exorbitant, yet are in force (as hath been said) in *Scotland* by authority of parliament. Such as, the power given to the constables to apprehend persons under the loose and indeterminate description of *night walkers*, not giving a good account of themselves; and power given to the justices to bind them to the *good behaviour*, previous to any trial and conviction of the offence: Power to the constable to arrest *idle persons*, having no means to live upon, and not betaking themselves to labour; with power to the justices (as before) to commit or bind them over: So also, the power given to a constable, on complaint of any person made to him (not upon oath) that another *threatens* him, to apprehend the person complained of, and carry him before a justice; and if he refuses to go before the justice, then to carry him to gaol.

BUT it is to be observed, that the aforesaid power of appointing justices, with the other powers consequent thereupon, by the statute of *James* the sixth, were only personal to that prince, and did not extend to his successors.

BUT

But by an act in the first parliament in *Scotland* of king *Charles* the *first*, *Stat.* 25. the same were continued during that king's reign, with power to enlarge and amplify the jurisdiction; as followeth: "Our sovereign lord and estates of parliament, ratify, approve, and confirm the eighth act of the 22d parliament, holden by king *James* the sixth of eternal memory, intitled, [*Anent the justices for keeping of the king's peace, and their constables*]; in the whole heads, articles, and clauses therein contained, admitting the generality hereof to be as valid and sufficient, as if the same were all herein *per expressum* ingrossed. Also his majesty, and estates aforesaid, give power, authority, and commission to the lords of his majesty's privy council, to inlarge and amplify the power and authority of the said justices of peace, if they find it necessary and expedient; and what they shall decree and determine thereanent, find and declare, that the same shall have the force, strength, and power of an act of parliament."

During the usurpation of *Oliver Cromwell*, the like powers were given, with some few alterations; of which the most remarkable were, that the justices might compel any person whatsoever to come before them, and proceed against all rioters and breakers of the peace, without exception; and that their power should not be subject to suspension for any number of days after commission of the crime by reason of any exempt jurisdictions. But these regulations expired with the authority that established them.

Then came the statute of *Charles* the *second*, in his first parliament or *Scotland*, *stat.* 38. intitled, *Commission and instructions to the justices of peace and constables*; by which it is enacted as followeth: "Our sovereign lord, taking to his royal consideration, how much the appointing of justices of peace and constables

ſtables, within all the ſhires of this kingdom, under the reign of his majeſty's royal predeceſſors, did contribute to the peace, quiet and good government thereof, and to the ſpeedy and impartial execution of law and juſtice to all perſons ſubjected to their juriſdiction and power; therefore, and for the furtherance of theſe ends in the future, his majeſty, with advice and conſent of his eſtates of parliament, doth hereby ſtatute and ordain, that *in all time coming*, there ſhall be juſtices of his majeſty's peace appointed, within each ſeveral ſhire of this kingdom, to be nominated from time to time by his majeſty and his royal *ſucceſſors*: Which juſtices of peace are hereby impowered to adminiſter juſtice, and put his majeſty's laws in execution [according to the particular inſtructions therein after mentioned; which inſtructions are above ſet forth, under the ſtatute of *James* the ſixth.]"

In the reign of king *James* the *ſeventh* (who was *James* the *ſecond* of *England*), in the firſt ſeſſion of his firſt parliament of *Scotland*, an act was made (*ſtat.* 16.) ratifying the aforeſaid acts of *James* the ſixth, *Charles* the firſt, and *Charles* the ſecond; with a ſpecial additional power to the juſtices, to proceed againſt church irregularities and non-conformity. But that act (amongſt many others of that ſame king) was repealed by an act of the ſecond parliament of *William* and *Mary*.

So that the matter, until the time of the union of the two kingdoms in the reign of queen *Anne*, reſts in effect upon the aforeſaid ſtatute of *Charles* the ſecond; giving power to the king and his ſucceſſors in all time coming to iſſue commiſſions of the peace, with authority to the juſtices to exerciſe their office according to the inſtructions above ſet forth.

The act of *Union*, 5 *An. c.* 8. brought in a conſiderable addition from the laws of *England*. For by the 18th article of the union, it is ſtipulated, "That the laws concerning regulation of *trade*, *cuſtoms*, and ſuch *exciſes* to which *Scotland* is, by virtue of this treaty, to be liable, be the ſame in *Scotland*, from and after the union, as in *England*; and that all other laws in uſe within the kingdom of *Scotland*, do after the union, and notwithſtanding thereof, remain in the ſame force as before, (except ſuch as are contrary to, or inconſiſtent with this treaty), but alterable by the parliament of *Great-Britain*; with this difference betwixt the laws concerning publick right, policy and civil government, and thoſe which concern private right, that the laws which concern publick right, policy, and civil government, may be made the ſame throughout the whole united kingdom; but that no alteration be made in laws which concern private right, except for evident utility of the ſubjects within *Scotland*."

Further, by the 6 *An. c.* 6. intitled, *An act for rendering the union of the two kingdoms more intire and compleat*, it is enacted, "That in every ſhire and ſtewartry within that part of *Great-Britain* called *Scotland*, and alſo in ſuch cities, boroughs, liberties, and precincts within *Scotland* as her majeſty, her heirs or ſucceſſors ſhall think fit, there ſhall be appointed by her majeſty, her heirs or ſucceſſors, under the great ſeal of *Great-Britain*, a ſufficient number of good and lawful men to be juſtices of the peace, within their reſpective ſhires, ſtewartries, cities, boroughs, liberties, or precincts; which perſons ſo appointed, over and above the ſeveral powers and authorities veſted in juſtices of the peace by the laws of *Scotland*, ſhall be further authorized to do, uſe and exerciſe, over all perſons within their ſeveral bounds, whatever doth appertain to the office and truſt of a juſtice of peace by virtue of the laws and acts of parliament made in *England*

before the union, in relation to and for the preſervation of the publick peace: Provided nevertheleſs, that in the ſeſſions of the peace, the methods of trial and judgments ſhall be according to the laws and cuſtoms of *Scotland*. Provided alſo, that nothing in this act contained ſhall be conſtrued to alter or infringe any rights, liberties, or privileges, heretofore granted to the city of *Edinburgh*, or to any other royal borough, of being juſtices of peace within their reſpective bounds."

So that, as by the act of union the laws of *England* concerning *trade*, *cuſtoms*, and *exciſe* were introduced; ſo by this act, all the *Engliſh* laws, by which the juſtices have juriſdiction *in relation to and for the preſervation of the publick peace*, are enacted to be in force for the ſame purpoſe in *Scotland*.

And this extends not only to the laws for preventing the peace from being broken, as by requiring ſureties for the peace, or good behaviour, or the like; but alſo to offences actually committed, ſuch as come under the denomination of *criminal*, and for which the offenders are to be proſecuted at the ſuit of the king. For thus it is explained by the ſtatute of the 8 *An. c.* 16. for abolifhing the method of exhibiting criminal informations by the porteous roll; reciting, "That whereas by virtue of the act of 6 *An. c.* 6. the juſtices of the peace in *Scotland* have ſufficient authority *to receive information concerning crimes committed within the reſpective counties, and to commit ſuch offenders, or take ſecurity or recognizance, and to do other neceſſary acts for the effectual proſecution of the ſaid crimes*; in conſequence whereof the old method of taking up dittay, and exhibiting informations againſt delinquents by the ſtreſs and porteous roll, as the ſame was grievous, is now become unneceſſary; it is therefore enacted, that the ſaid method of taking up dittay, and exhibiting infor-

mation by the ſtreſs and porteous roll, ſhall be totally aboliſhed to all intents and purpoſes whatſoever."

And as to other matters not relating to the peace, there are acts paſſed in almoſt every ſeſſion of parliament, giving power to the juſtices in *Scotland* to proceed in the execution thereof; ſometimes ſpecially, as in acts made for *Scotland* only; or otherwiſe generally, in acts made for the whole united kingdom.

So that the juſtices in *Scotland* have all that power which they had by the laws of *Scotland* before the union; and a large additional power, from the laws of *England* before the union; and from the laws enacted by the parliament of *Great Britain.*

In order therefore to obtain an intire knowledge of the whole office of theſe juſtices in *Scotland*, the laws of both kingdoms muſt undoubtedly be taken into the account.

The laws of *Scotland*, are but few in compariſon; and generally ſuccinct and ſhort. But it is to be obſerved, that there is one thing in the *Scotch* laws, to which our laws are not ſimilar. Their ſtatutes, or acts of parliament, by non-uſes loſe their force and obligation. And this lord *Stair* reckons as a comparative excellence in their law. "Notwithſtanding, (he ſays) that their ancient common law continues unaltered by contrary uſage, yet their ſtatutes or acts of parliament are liable to deſuetude, which never incroaches on the other. And in this (ſays he) we differ from the *Engliſh*; whoſe ſtatutes of parliament, of whatſover antiquity, remain ever in force till they be repealed; which occaſions to them many ſad debates, publick and private, upon old forgotten ſtatutes." *Stair. B.* 1. *Tit.* 1. *ſ.* 16.

And

And Mr. *Mc Douall* ſays, "Many of our old *Scotch* ſtatutes have run into deſuetude; a contrary uſage, acquieſced in by the lawgivers, being a tacit abrogation of them. But if theſe laws (he adds) do concern the *publick policy of the kingdom*; a diſuſe of them paſt memory, or a contrary practice, regularly will not derogate from them: a cuſtom againſt ſuch laws will always remain erroneous, and cannot be eſtabliſhed by any length of time." 1 *Mc Douall. B.* 1. *Tit.* 1. *ſ.* 60.

The only difficulty therefore that remaineth with regard to the *Scotch* ſtatutes ſeemeth to be, to determine with preciſion, which of them are now in force, and which of them are abrogated by contrary uſage.

As to the laws of *England* made before the union, there ſeemeth to be no material difficulty.

With reſpect to the laws made by the parliament of *Great Britain*, there ſeemeth to be ſome foundation of doubt, no rule having been hitherto eſtabliſhed whereby to aſcertain which of them extend to *Scotland*, and which do not. And in this the learned ſeem not to be altogether agreed. In ſome ſtatutes, there is a ſpecial proviſo, that the ſame ſhall not extend to that part of *Great Britain* called *Scotland:* Concerning theſe, there can be no doubt. Others import to be enacted for the kingdom of *Scotland* only: As to theſe likewiſe the caſe is very clear. There are other ſtatutes, in which there are manifeſt indications that they are intended for both kingdoms; as where it is expreſſed, *within the kingdom of Great Britain*, or ſometimes leſs explicitly, as, *within this kingdom*, —— *within this realm*, —— *within his majeſty's dominions*, and the like; and the circumſtances at the ſame time are equally applicable to both kingdoms.

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On the other hand, there are acts which refer to ſome preceeding *Engliſh* act only, and recite inconveniences not incident to the other part of the united kingdom; theſe have evident ſignatures that they are intended for *England* only.

But the queſtion is, where an act is general; as if it expreſs, that if a man ſhall commit ſuch an offence, he ſhall, upon conviction thereof before a juſtice of the peace, forfeit ſo much. The clauſe (which is not infrequent in ſtatutes) excepting *Scotland*, ſeems to imply, that if the exception had not been, the act would have extended to *Scotland*. And if ſo, far the greateſt part of the *Britiſh* ſtatutes, which give cognizance to juſtices of the peace in the reſpective caſes, extend to both kingdoms alike.

To give ſome inſtances: —There have been ſeveral acts in *Scotland* made, with reſpect to *vagrants*, evidently framed from the like regulations made in *England*, modified only according to the different circumſtances of each kingdom. Then comes the *Britiſh* act of the 17 *G.* 2. *c.* 5. which recites, "Whereas the number of rogues, vagabonds, beggars, and other idle and diſorderly perſons, daily increaſes, to the great ſcandal, loſs, and annoyance *of the kingdom*."——And therefore enacts ſeveral regulations to be made with regard to ſuch offenders; and repeals the whole *Engliſh* law relating to vagrants prior to the ſaid act, but ſaith nothing of the *Scotch* laws. It may ſeem from hence, that the *Scotch* vagrant acts are intended to continue in force, ſo far as they are not altered by the ſaid act; and that in other reſpects this ſame act ſhall be in force in *Scotland*; and, conſequently, in order to exhibit the whole law relating to vagrants in *Scotland*, thoſe acts of *Scotland*, and this preſent *Britiſh* act are to be taken together. And accordingly, Mr. *M'Douall* obſerves

obſerves in this caſe, that the *Britiſh* act muſt be the rule, in deſcribing who ſhall be rogues, vagabonds, and ſturdy beggars, and the like; as likewiſe with reſpect to their puniſhment: but as to the legal ſettlement in a pariſh, to which the vagrants are to be ſent, in order to be corrected or maintained, it muſt be taken from the *Scotch* acts; and by the lateſt of theſe, the party's reſidence in a pariſh the laſt three years is the rule: And accordingly it was found by the Lords, in a caſe of maintenance of a poor perſon, that ſuch pariſh was bound to ſupport him. (Caſe of the town of *Dunſe*, *June* 5, 1745.) 1 *M^c. Douall. B.* 1. *Tit.* 2. *ſ.* 59.

THE *Britiſh* act of the 12 *An. ſt.* 2. *c.* 18. concerning *ſhips* caſt on ſhore or otherwiſe in diſtreſs, refers only to two *Engliſh* acts; yet inaſmuch as the ſubject matter thereof concerns both kingdoms alike, and the directions therein require that the conſtables and others, within the ſeveral ports *within her majeſty's dominions*, ſhall take order for the preſervation of the ſhips and goods, it may ſeem to extend to the whole united kingdom.

THE ſtatute of the 16 *G.* 2. *c.* 31. concerning *priſoners* attempting to eſcape; the 6 *An. c.* 31. about ſervants *firing* houſes; the ſeveral *Britiſh* acts againſt *gaming*; are expreſſed generally: Yet Mr. *Mc Douall* recites them as of force in *Scotland*, *becauſe* they are general, and not limited to *England*. *B.* 1. *Tit.* 8. *ſ.* 200. *Tit.* 10. *ſ.* 73, 206---211.

THE 24 *G.* 2. *c.* 44. for rendering *juſtices* more ſafe in the execution of their office, by the ſtyle thereof, is adapted to proceedings in the courts of *England*. Yet (Mr. *Mc Douall* obſerves) from the ſpirit and intendment of it, that it may juſtly be thought, it ought to take place alſo in *Scotland*, ſince (as he adds) it is not limited to *England*. *B.* 4. *Tit.*

Tit. 17. *f.* 17. And in the caſe of the duke of *Douglaſs*, *v. Lockhart of Lee*, *Dec.* 18. 1753, the court of ſeſſion was of opinion that this act did extend to *Scotland*. But on appeal to the houſe of Lords, this determination was reverſed; the Lords being of opinion, that it is limited to *England*.

So the 32 *G.* 2. *c.* 28 for relief of *debtors* with reſpect to the impriſonment of their perſons, altho' general, yet referring chiefly to the manner of proceeding in the *Engliſh* courts, which is not compatible to the courts of *Scotland*, doth not ſeem to extend unto *Scotland*. 3 *M'* *Douall.* *B.* 4. *Tit.* 37. *f.* 14.

So alſo the ſtatutes of the 8 *An.* *c.* 14. and 11 *G.* 2. *c.* 19. concerning *diſtreſſes* for rent, tho' general, yet extend only to *England*; becauſe they are inconſiſtent with the method of recovering rent by the laws of *Scotland*. 1 *M'* *Douall.* *B.* 1. *Tit.* 17. *f.* 9.

The ſtatute of the 6 *G.* 2. *c.* 31. recites in general, "Whereas the *laws now in being* are not ſufficient to provide for the ſecuring and indemnifying pariſhes and other places from the charges ariſing from *baſtard* children;" and therefore enacts, that on application to a juſtice, he may cauſe the reputed father to be apprehended, and commit him to priſon, unleſs he give ſecurity to indemnify the pariſh, or enter into recognizance to appear at the next ſeſſions, and to abide ſuch order as ſhall be made in purſuance of the ſtatue of the 18 *Eliz.* *c.* 3. Which act, for the reaſons abovementioned may ſeem not only to extend unto *Scotland*, but alſo to bring in conſequentially the ſaid ſtatute of the 18 *Eliz.*

The ſtatute of the 31 *Eliz.* *c.* 5. limiting the time within which actions ſhall be brought on *penal ſtatutes*

ſtatutes then made or *to be made*, hath been adjudged by the court of ſeſſion to be the rule in *Scotland* as to *Britiſh* ſtatutes. 1 *M'Douall. B.* 1. *Tit.* 1. *f.* 26. 2 *M'Douall. B.* 4. *Tit.* 24. *f.* 15.

And generally, Mr. *M'Douall* obſerves, when a *Britiſh* ſtatute, extending to *Scotland*, enacts a crime, tho' it mentions the ſame to be triable before the courts at *Weſtminſter*, without directing where it is to be proſecuted when committed in *Scotland* (as is ſometimes done); yet the ſame is to be tried before the court of juſticiary, to which are ſaved all its powers and privileges by the articles of the union; for, as to all crimes committed in *Scotland*, that court regularly is competent, and conſequently ſuch ſtatutory crimes committed there muſt be ſued before the ſame, or go unpuniſhed. Thus where a ſtatute in *England*, before the union, enacted any thing to be a crime, and directed the ſame to be proſecuted before a certain court; yet if it did not provide, that it ſhould not be ſued elſewhere, the other courts, that would have been competent at common law, if no ſuch particular court had been ſpecified, have juriſdiction likewiſe in it. For (in the words of Lord *Coke*, 2 *Inſt.* 448.) if the meaning of ſuch ſtatute were, to exclude other judges than thoſe that are named, there muſt be words negative, as, not in any other court, or, not before any other judges. And by the ſame rule, where a *Britiſh* ſtatute mentions particular judges for having cognizance in any crime thereby enacted, without ſuch excluſive words; the judges ordinary, either in *South* or *North Britain* reſpectively, muſt be competent to try the ſame, as the crime happens to be committed in the one or the other part of the united kingdom. 2 *M'Douall. B.* 4. *Tit.* 9. *f.* 21.

Upon the whole, the juſtices in *Scotland* ſeem to have more power, than hath uſually been exerciſed

there. And they were, by the aforeſaid inſtructions, under ſeveral diſcouragements. They had only a concurrent juriſdiction with the owners of franchiſes; or rather an inferior juriſdiction, being only to act in caſe the other ſhould neglect for a certain number of days. They were accountable and ſubordinate to the privy council; and in many caſes were only to report offences to the council or others, rather as informers than judicial officers. And above all, whilſt the clanſhips ſubſiſted, it was ridiculous for a juſtice of the peace to ſend a conſtable, either alone, or attended with the power of his conſtablewick, to apprehend an offender; when the whole confederacy would immediately appear in arms to defend him. But now theſe circumſtances are greatly altered, as by other ſtatutes, ſo particularly, by the act for aboliſhing the hereditary juriſdictions (20 *G.* 2. *c.* 43.); by the act for diſſolving the privy council of *Scotland*, and enacting that there ſhall be only one privy council of *Great Britain*, which ſhall have the ſame power as the privy council of *England* had before, and no other; and giving power to the juſtices in *Scotland* in all matters relating to the peace which the juſtices have in *England* (6 *An. c* 6.); and by the act of the 20 *G.* 2. *c.* 50. for aboliſhing the tenure of ward holding, and thereby diſſolving the feudal combinations, againſt which the peace officers of any kind could oppoſe but a very feeble reſiſtance.

It hath appeared, that the law concerning the office of a juſtice of the peace is the ſame, in both parts of the united kingdom, in all matters relating to the revenue, and to the preſervation of the publick peace, and in abundance of other inſtances by *Britiſh* ſtatutes. Theſe ſtatutes, except where they particularly relate to *Scotland*, are generally drawn up by *Engliſhmen*, and conſequently, follow the *Engliſh* mode of expreſſion, and apply to the *Engliſh*

courſe of proceeding: and, without a judicial determination in particular caſes, it cannot expreſsly be defined, which of them extend to *Scotland*, and which do not. Or rather, a parliamentary declaration would be uſeful in this reſpect, as it would ſettle all doubts at once. Or, it may be conſidered, as the laws of the two kingdoms in the inſtance before us are ſo near to each other already, whether it might not be convenient to advance one ſingle ſtep further, by enacting, that the office of a juſtice of the peace ſhall be the ſame throughout the whole united kingdom. In which caſe, it would previouſly be requiſite, to examine the laws of both kingdoms reſpectively, and from thence take out what may be uſeful, and repeal the reſt. For there are many things in the laws of either kingdom, which might be beneficially transferred into the other: and there is much rubbiſh in both, that incumbers the office, and had better be done away. In the mean time, the judicial courſe of proceeding in the ſeſſions might continue the ſame in *Scotland* as heretofore, according to the reſervation in the act of Queen *Anne* abovementioned, until time ſhall utterly wear off all diſtinctions; which at preſent (if examined) will be found to be chiefly nominal, differing more in technical terms and expreſſions, than in ſubſtance and reality.

A GE-

A GENERAL

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OR

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